AMERICAN BAR ASSOCIATION
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Important Committee Appointments

President Severance has just announced the membership of two very important committees; the Committee on Judicial Ethics and the Committee to Draft a Plan for Propaganda for American Ideals.

Chief Justice William Howard Taft of the United States Supreme Court is chairman of the Committee on Judicial Ethics. Chief Justice Robert von Moschzisker of Pennsylvania, Chief Justice Leslie C. Cornish of Maine, Charles A. Boston of New York City, and Hon. George Sutherland of Washington, D. C., are the other members.

The membership of the Committee on American Ideals is as follows: Hon. Martin J. Wade, Chairman, Iowa City, Iowa; Major Edgar B. Tolman, Chicago; Walter George Smith. Philadelphia; R. E. L. Saner, Dallas, Texas; Hon. Andrew A. Bruce, University of Minnesota, Minneapolis, Minnesota.

The first committee, as the name indicates, has as its principal object the formulation of a code of ethics for the Bench. It has long been a frequent remark that the Bar has its code of ethics, as represented in certain definite canons, while nothing of the sort has yet been drafted to govern judicial conduct.

The second committee is expected to report to the coming convention at San Francisco on the methods whereby the American Bar Association can best use its energy and influence to combat various anti-American activities and to help promote in the body of our citizenship a clearer understanding of American institutions.

Law Enforcement Committee's Work

Much interest is being shown by press and public in the activities of the Committee on Law Enforcement of the American Bar Association. The committee is holding a series of meetings, at which efforts are made to secure first-hand information of practical value in the solution of this pressing national problem. It has also, we are informed, received a great deal of material, covering various aspects of the question, from those who have given the subject particular study. The first meeting was held at Washington. Chicago was the scene of the next, and it is planned to have another in New York in May and, later on, perhaps one in some southern city, probably Memphis, Tenn.

The Washington meeting was held in the office of Mr. Wade H. Ellis, in the Southern Building, and all members of the committee were present, except ex-Governor Charles S. Whitman, who was ill. Mr. Myers, a representative of the Department of Justice, attended the sessions a part of the time, representing Attorney-General Daugherty. Mr. Reginald Heber Smith, of Boston, presented an elaborate brief on the general subject, as well as his views on "Law and the Poor." Mr. Wayne B. Wheeler, general counsel of the Anti-Saloon League, furnished much data as to the enforcement of the Volstead Act. Attorney General Shaw, of Maine, gave an encouraging account of the work in that state to overcome the law violations springing from the smuggling of contraband whiskey across the state line. William J. Burns, Chief of the Government Bureau of Investigation, furnished a great deal of data and made some valuable suggestions.

In the next issue there will be an account of the meeting at Chicago on April 10, in the courtroom of Judge Kavanagh. The committee expects to obtain much valuable information from the leading experts in that city. The plan to visit the state prison at Joliet and to examine some of the criminals there should furnish further light on the subject.

The members of the committee are: W. B. Swaney, Chattanooga, Tenn., chairman; Judge Marcus Kavanagh, Chicago; Charles W. Farnham, St. Paul; ex-Gov. Charles S. Whitman, New York City; Wade H. Ellis, Washington, D. C.

Monument to the Late Chief-Justice Chase

A monument of suitable dignity will soon be erected over the grave of the late Chief Justice Salmon P. Chase, in the Spring Grove Cemetery, Cincinnati. The special committee, composed of Senator Selden P. Spencer of Missouri, chairman; Mr. Guy Mallon of Cincinnati, and Mr. Andrew Squires of Cleveland, have finally agreed upon a design and let the contract. The monument is to be a solid block of the finest quality of Vermont granite, rectangular in form, about nine feet long at the base and four feet four inches high. The proposed inscription reads as follows:

SALMON PORTLAND CHASE
Born January 13, 1808, at Cornish, N. H.
Died May 7, 1873, at New York.
1856—Governor of the State ofOhio—1860
1849—U. S. Senator—1855
1861—Secretary of the Treasury of the United States—1864
1864—Chief Justice of the United States—1873
Erected under the auspices of The American Bar Association

The understanding is that the monument is to be in place by May 30, 1922. The total cost of cutting, chiseling and setting the monument will be $3,800. This is regarded by those who have looked into such matters as a very reasonable price indeed. Many members who wish to associate themselves more directly with this movement of the American Bar Association to pay fitting honor to the late Chief Justice have already contributed. Others who feel the same way about it are requested to be good enough to send their contributions to Treasurer Frederick E. Wadhams, 78 Chapel St., Albany, N. Y.

Preparation at San Francisco

San Francisco, March 31.—*(Correspondence.)*—California lawyers are making the most active preparations to greet and entertain a large number of lawyers from other parts of the country at the American Bar Association Convention at San Francisco, August 9, 10 and 11. In fact, so carefully are the lawyers preparing and so great is their interest that they will be immensely disappointed if this convention is not the largest in point of attendance in the history of the Association.

Particularly, however, do they want to welcome their brothers of the east and middle west. California wants to exhibit herself to the men of the law from the other parts of the world as an exemplar of seasonable climate, pleasant surroundings and comfortable activity.

The invitation to the American Bar Association and its members to come to San Francisco was heartfelt and represented the desire of the entire "region of the Pacific." While San Francisco is the convention city, she will be assisted in receiving and entertaining the visitors from the torrid east by Los Angeles, and California will be the host.

The Executive Committee of Arrangements of the California Bar Association is actively at work. The Committee on Membership has undertaken a state-wide campaign for new members for the American Bar Association, which campaign will be extended to other Pacific Coast states. If the results already obtained in San Francisco are any indication of what is to be expected in the matter of new members, the number of names added to the rolls will far exceed that of any previous year.

Oregon has pledged its assistance both as to membership and participation in the convention. Chairman Beverly L. Hodghead of the San Francisco Committee met with the Oregon Bar Association at Portland on Saturday, March 25, and secured a pledge from that organization of hearty co-operation. Nevada will also lend every assistance possible.

Under the able direction of Bradner W. Lee, Los Angeles is getting actively into line and is preparing special entertainment for the delegates as they pass through, either going to or coming from the convention. They have inaugurated an active membership campaign in the southern part of the state that promises to bear good fruit.

The Executive Committee of Arrangements of the California Bar Association wants the lawyers of the United States to come and enjoy themselves at the meeting in San Francisco, and realize what they probably have not realized before, that here is an empire that is the most precious possession of the nation and whose problems demand the best thought of the bar of the United States, based upon that knowledge that comes only from personal contact.

Attorney General Daugherty Invoked Bar Aid

Hon. H. M. Daugherty, Attorney General of the United States, has appointed Hon. John R. Montgomery and Major Edgar B. Tolman, well known practicing lawyers of Chicago, as special assistants to the Attorney General to assist in the investigation of charges filed against the office of Federal District Attorney at Chicago by Major John V. Clinnin, who was formerly connected with it. Soon after the charges were filed the Attorney-General requested the Chicago and Illinois Bar Associations to name six prominent lawyers, from whom he could select two to render the assistance desired. These bodies named six ex-presidents of the Chicago Bar Association, and from them the Attorney General made the appointments noted. Major Tolman, one of the gentlemen chosen, has also been president of the Illinois State Bar Association. Both have accepted the appointment and will begin work at the earliest possible opportunity.

Meeting of Uniform State Law Committee

The Scope and Program Committee of the National Conference of Commissioners on Uniform State Laws will meet at ten o'clock, May 12th, in Room 1C of the New York City Bar Association Building, 44 West 42nd St., New York City, at which time the committee will be glad to have suggestions from lawyers or laymen as to the standardization of state laws which it is desirable and practical to standardize. Communications may be mailed to the address above given or the chairman.

A. T. STOVALL, Chairman,
Okolona, Mississippi.

SIGNED ARTICLES

As one object of the AMERICAN BAR ASSOCIATION JOURNAL is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this JOURNAL assume no responsibility for the opinions in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

ETHICS OF THE BENCH

Certain Suggestions as to Standards of Propriety Which Should Govern the Personal and Official Conduct of Judges*

By Hon. Russell Benedict

Justice of the Supreme Court of New York

IN THE valediction addressed to James Kent by the learned Reporter and printed in the last volume of Johnson's Chancery Reports, in 1824, on the occasion of the retirement of the Chancellor, the following passage occurs: "Nothing contributes as much to the true glory and happiness of a nation as the pure administration of Justice." That this sentence is not merely approximately, but is entirely true, history demonstrates. The proper limits of this paper will not admit of a recital of the numberless examples that might be mentioned in support of this concept from the records of ancient Greece and Rome or from the modern chronicles of England, France, Holland or America. Familiar illustrations will, however, instantly recur to the memory.

Justice is founded upon law. It cannot exist unless law be established, any more than human liberty and freedom can flourish and survive where justice is not present. This country was founded on the desire and purpose to secure and maintain in the New World that kind of liberty and freedom regulated and governed by law which had been denied in the Old World. Our Nation will last only so long as it adheres to this basic principle.

Because our institutions were designed to foster liberty, our history—at least in the earlier stages—shows a general adherence and obedience to the laws of the land, and a general desire to study and to understand them. In addition to this, since public office in this country has been within the reach of practically all citizens—and does not depend on the favor of kings—the profession of the law has always been regarded as offering the best opportunity for entry into the public service, which touches our fundamental law at all points and requires a knowledge of the sources from which our laws and institutions are derived.

Hence, the profession of the law has thriven greatly among our people, more than in any other nation. In an article published in the *Green Bag* in 1904 the statement was made that China had no lawyers; that in Russia the proportion of lawyers to population was 1 to 31,000; in Germany, 1 to 8,700; in France, 1 to 4,400; in England, 1 to 1,100; and in the United States, 1 to 700. No statistics are given as to Japan; but I am glad to note in passing that, mainly through the splendid efforts of Dr. Masujima and his associates, Japan is now opening her doors to the study of English and American jurisprudence; and the efforts of these publicists should be accorded every possible encouragement by lawyers in this country who are interested in hastening a better understanding between these great nations.

In the light of the figures just given it requires no argument to prove the vital importance to the public welfare of this country that the Bar should not only be well-grounded in the science of jurisprudence, but that above all things it should give its loyal and enlightened adherence to those ethical and moral principles which underlie the practice of the law, and without which the greater the legal knowledge that the practitioner possesses, the greater the danger to the community from its misuse.

It is only in recent years that serious effort has been directed by the Bar to the formulation of any systematic Code of Ethics for lawyers. Such codes indicate the desire on the part of the members of the Bar to lay down definite principles or rules of conduct for their own government in their relations to the Court and to one another.

By observance of them the profession of attorney and counsellor at law is intended to be raised to its proper dignity; courtesy in professional intercourse is inculcated; integrity towards clients made obligatory, and respect for the law and its administrators maintained.

It is true that such codes have not the force of statutes where no infraction of the civil or the criminal law is also involved, but are supplementary to such statutes, and their enforcement rests on the judicial discretion reposed in the court to uphold the honor and the dignity of the law.

To quote from a late decision in this department which was affirmed by the Court of Appeals, the Court "has jurisdiction over its own officers and is authorized to discipline any attorney who is guilty of professional misconduct."

The office of attorney and counsel in the law imposes personal responsibility for the conduct of the lawyer which involves an entirely different standard from that governing the conduct of men in other walks of life. It is not a trade or business wherein those engaged deal at arms' length, or wherein the maxim "caveat emptor" is the guide. The attorney on admission to the bar becomes an officer of the court. As he crosses the threshold of the Temple of Justice he stands on hallowed ground; he puts on the robe of its best traditions, and he cannot, without violation of his oath of office, do aught that will cast a stigma on the profession, or bring the court of which he is an officer int disrepute.

This is no mere counsel of perfection. It is elementary and basic. How much more imperative is the duty which rests on the Court itself, never to overlook or deny by word or act those greater obligations which its higher office entails. It is an almost universal custom in this country for the judges of the higher courts to have had experience at the bar, and, as everyone who is admitted to practice the profession of the law becomes, potentially, a judge—just as every soldier of Napoleon became, potentially, a Marshal of France—

*Address delivered at the annual meeting of the New York State Bar Association, New York City, Jan. 21, 1922.

it plainly behooves the bench to give close attention to the character and the conduct of those who may be elevated to it; and it behooves the bar to see to it that none but those who are worthy ascend the bench.

In the forty-eight States of the Union there are about 130,000 lawyers admitted to practice their profession, although not all of those entitled to do so follow the profession as a vocation. Of this multitude several thousand sit as judges in our higher courts, and thousands more sit in local or inferior tribunals. It is inevitable that among so great a number there must be, on account of the human equation, great differences in education, temperament and experience, and great diversity in legal capacity, mental vigor, breadth of vision, and, unfortunately, in ethical perception and moral courage as well. Hence it is of great consequence that in choosing judges, whether by appointment or by election, the bar should possess and exercise the best influence of which it is capable, to secure magistrates who shall worthily administer justice. That such a need and such a duty exist is evident from one of the Canons of Ethics adopted on the subject both by the American Bar Association and by this Association as well. It is contained in Article 2, Section 2, which reads as follows:

> The Selection of Judges: It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employment, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office, and not by a desire for the distinction the position may bring to themselves.
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> (Adopted August 27, 1908.)

It is unnecessary to speak further regarding the duty of the bar in the selection of judges because that subject has been treated comprehensively in the learned address of the president of this Association before the Conference of Bar Association Delegates at Cincinnati, last summer, which address is printed in the JOURNAL of the American Bar Association for October, 1921.

While a good deal has been written recently on the ethics by which the conduct of attorneys should be regulated, but little has been published on the ethical considerations which ought to control the demeanor and guide the official conduct of judges. This fact may be due to various causes. Perhaps it is due, more often than otherwise, to the disinclination of practicing lawyers to criticise or comment publicly on the actions of particular members of the bench. Perhaps it is due in part to the belief that infractions of duty or propriety on the part of individual members of the bench are too infrequent to require the formulation of general rules; but this belief appears not now to be so universally held as formerly. The Committee on Professional Ethics and Grievances of the American Bar Association, at the meeting at Cincinnati, last summer, in its annual report referred to the fact, in connection with complaints against the judiciary received during the year, that the Association had adopted the Canons of Ethics for the bar but none for the Bench, although there had been recommended to the Association by the committee in 1917 the propriety of the formulation and promulgation of canons for the judiciary also. The necessity for such action was plainly shown in the debates which followed in the convention.

If it be true that the proper administration of justice in this country demands, by reason of present-day conditions, that the personal and official conduct of judges be governed by recognized and settled standards of propriety, it is surely timely and proper that the members of the bar display moral courage sufficient to express openly the views which they hold and often express quite freely when out of court, concerning judicial misconduct. It frequently occurs that in the particular case the offense does not rise to the grade of an impeachable or indictable crime. It is obvious that a judge may often be entirely unfit to administer justice although under the law he cannot be impeached. In our own state this fact is recognized in our Constitution, which gives to the Legislature the power to remove the highest judicial officers from office after opportunity to be heard, as well as by proceedings for their impeachment.

Perhaps a little advice from one of their brethren, still on the bench, may assist the bar in giving expression to some standards of judicial conduct. That which I may have to say on the subject may be understood to be of the sort that Sir John Salmond, in his notable book on jurisprudence, refers to as "of merely persuasive efficacy," and also as coming within his statement that "Judicial declaration, unaccompanied by judicial application, is of no authority." I appreciate the importance of the subject and regret my inability to treat it adequately within the time allowed. I can do little more than epitomize what I have to offer.

Perhaps it may be of advantage to consider first the essence of justice, and then to pay attention to its relation to the judicial office.

The essential character of justice is best understood when concretely symbolized by a female figure holding with one hand scales at an even balance, and with the other a sword. If the figure were that of a man, it would typify the attribute of force alone, without the quality of mercy. If the sword were absent it would signify lack of power to enforce her just decrees. If the scales were not truly balanced, it would indicate that one suitor or the other was of greater consequence, rather than that both stand on an equality before the law. Justice should listen to the evidence of suitors, and not decide on appearance merely. Therefore, her eyes are blindfolded.

If I were asked how best to interpret the relation of justice to the judicial office, I should think it advantageous to formulate canons of ethics for judges. Such a task would lead me first to the Scriptures as being the best source of jurisprudence, which, to quote the maxim of the civil law, "is the knowledge of things divine and human; the science of what is right and what is wrong." Many are the injunctions laid upon judges in Holy Writ; but they are summed up in the words of Jehosaphat, King of Judah, who set judges in the land "And said to the judges, Take heed what ye do for ye judge not for man, but for the Lord, who is with you in the judgment. Wherefore, now let the fear of the Lord be upon you; take heed and do it; for there is no iniquity with the Lord our God, nor respect of persons, nor taking of gifts." (2 Chron. XIX 6.)

If any further specifications were demanded, I would emphasize the need of moral courage in a judge as the next greatest requisite, and would cite the glorious example of Lord Coke, who forfeited the office of Chief Justice of England and spent seven months in

The Tower because he protested against the aggressions of James The First, which debased and corrupted the administration of the law; and who on December 16, 1621, penned the famous Protest of Parliament which enunciated the principle that the rights of the people are paramount to the pretended Divine Right of Kingship.

Then I would refer to that memorable essay on Judicature written by Coke's great rival, Lord Chancellor Bacon, a little over three hundred years ago. I content myself and you at this time with the following extract:

> Patience and gravity of hearing is an essential part of Justice; and an over-speaking judge is no well-tuned cymbal. It is no grace to a judge first to find out that which he might have heard in due time from the bar; or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions, though pertinent. The parts of a judge in hearing are four: to direct the evidence; to moderate length, repetition or impertinency of speech; to recapitulate, select and collate the material points of that which hath been said; and to give the rule or sentence. Whatsoever is above these is too much, and proceedeth either of glory and willingness to speak, or of impatience to hear, or of shortness of memory, or of want of a stayed and equal attention.

Then I would submit some other considerations which you may or may not deem worthy of attention:

Judges should not be overborne by the rank or reputation of the counsel engaged, nor affected by the wealth, position or influence of the parties. They should be independent, free and unafraid.

Judges should not forget that they sit to judge, and not to act as counsel.

Judges should not seek to shift the responsibility of decision from their own to the shoulders of counsel, whose office in a trial is to enlighten the mind of the court, but not to substitute their views for its judgment.

Judges should when necessary look beyond the counsel to the counsel's client, and not permit a wrong to prevail because of the neglect or lack of learning of the counsel.

Judges should not be afraid of reversals of cases which they have decided according to their conscience and their knowledge of the law. If on appeal their decisions be reversed for error, they should be glad to be set right and to see the law prevail. Judges should enforce the law and not seek to evade or nullify it to suit their individual opinion of its merits. If the law be bad the responsibility for it should be placed respectfully but squarely on the law-making power. Judges should not evade deciding the case before them. An undecided judge is worse than one who decides erroneously.

Judges should not seek, by means of their decisions on matters of public concern, to further their own interests or prospects.

Judges should not try to make popular decisions. A judge who strives to gain popularity by his decisions, without regard to the right of the cause, renders himself unfit to deal out even-handed justice, and his act is prompted by deceitful, selfish or unworthy motives.

Judges should set the Bar an example of punctuality. It is discourteous for a judge to keep a court-room (filled with lawyers, jurors, clients and witnesses) awaiting his arrival, unless he is unavoidably detained, in which case he owes an explanation to those present whose time has been wasted.

Judges should render their decisions fully and with promptness. As Lord Coke said, "Plena et celeris justitia fiat partibus; not plena alone, nor celeris alone, but both plena and celeris" (4 Inst. 67). Justice delayed is often justice denied.

Judges ought always to acknowledge their obligations to the Bar for aid in reaching correct decisions. It is a mistake to suppose that the development of our system of common law is due to the courts alone. None knows better than a candid judge how much is owed to the assistance of an able and upright Bar.

Judges should not live in retirement or seclusion. They should mingle freely with members of the bar on all suitable occasions where the interchange of ideas may be of benefit to both.

Judges should never forget that it is their duty to set an example of courtesy to the Bar. Judges should be gentlemen, and then, as Lord Lyndhurst remarked of his method of selecting them for appointment, "if they also know law, so much the better."

A judge who browbeats or humiliates members of the Bar in public does not add to the dignity of the Bench, but only lowers himself in the esteem and respect of those who witness the incident.

Judges should not take an active part in political campaigns, either by appearing on the platform for public discussion of partisan issues or by publishing their political sentiments for the benefit of candidates or in aid of a political party or faction. Any breach of observance of this rule instantly lowers the judge, if not the court of which he is a member, in the respect of thinking men and women in the community. Judges are not chosen by reason of a public desire to place politicians on the Bench, but in order that justice may be impartially administered. If a judge wishes to engage in the turmoil of politics, he should lay aside his ermine lest it be smirched with the foulness of the partisan arena. A robe once soiled can rarely be purified again, unless, indeed, its wearer be as great as Coke, of whom Hallam says, "he redeemed in an intrepid and patriotic old age the faults which we cannot avoid perceiving in his earlier life." Of course, there is no reason why a judge should not, in his private capacity, take a personal interest in the affairs of Nation, State or City, because it is his duty to discharge the functions of citizenship wisely and intelligently. He does not cease to be a citizen by reason of the higher station he occupies.

Judges, especially those who receive for their services compensation equal to a living wage, should not engage in the practice of the law. This rule is embodied in the Federal Judicial Code and in the Statute Law of many of the states. It should be made obligatory in all.

Judges who are elevated to the Bench by vote of the people owe a duty to the public to remain on the bench for the entire term for which they are elected. It is not seemly to seek or accept the office of judge—especially of a superior court—and during the term to resign the office in order to capitalize the reputation acquired from judicial prestige. Such action savors of commercialism, unless it be unavoidable because of ill-health or other controlling reason.

Judges should not engage in business enterprises of any kind. Their entire time, efforts and abilities should be devoted to the proper discharge of the duties of their high office. It is manifestly improper for a judge to accept any salaried position which will infringe upon his time or distract his attention from the proper sphere of his labors. No man is great enough

to serve two masters whose interests may come into conflict, and it is dishonest for him to attempt to deceive the public into thinking that he can accomplish such a result. Besides, each master is paying him for all his time, and each is defrauded out of that which is devoted to the service of the other.

I took occasion recently to call public attention to a flagrant violation of judicial ethics in this regard. I feel that the duty that every judge or lawyer owes to his profession in such a case has been discharged, so far as I am concerned, though very much more ought to be said and done by others concerning it.

In striking contrast to this humiliating exhibition is the spirit and the act of our greatest judicial officer, Chief Justice William Howard Taft, in regard to a matter of far less consequence; and I cannot bring this paper to a close better than by quoting from a recent letter he sent to the editor of the Philadelphia *Public Ledger*. He says:

> Having been appointed and qualified for a judicial office, it becomes necessary and proper for me to cease to be a contributor to these editorial columns. The degree in which a judge should separate himself from general activities as a citizen and a member of the community, is not usually fixed by statutory law, but by a due sense of propriety, considering the nature of his office, and by well-established custom. Certainly, in this country at least, a judge should keep out of politics and out of any diversion or avocation which may involve him in politics. It is one of those characteristic, queer inconsistencies in the British judicial system—which was the forerunner of our own—that the high judicial officer in Great Britain, the Lord Chancellor, is often very much in politics and has always been. He changes with each Administration, and his is a political appointment; but all the other judges of the High Courts of England are as little in politics as in this country.
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> A judge should avoid extra-judicial activities, not only because they may put him in an attitude actually or seemingly inconsistent with absolute impartiality in the discharge of his judicial duties, but also because he owes his whole time and energy to his judicial work.
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> For those reasons I must give up the pleasant relation to the readers of its editorial page which the Public Ledger has enabled me to enjoy.

In conclusion: May I be permitted to repeat this paragraph from what I wrote in the case referred to above?

> Our courts are instrumentalities of government established by the people for the common good—not for the good of the judges who minister in them. Anything, therefore, which belittles or degrades our courts or judges, whether Federal or State, and whether the Court or Judge be superior or inferior in function, threatens the destruction of the foundation on which the system rests, namely: the faith in and respect of the people for their courts.

Emotionalism and Contracts

In a recent suit by an American actress against a London producer for breach of contract, the court apparently took judicial notice of the temperamental artistic character. The defendant claimed that she had broken the contract herself and resigned when she exclaimed, in the course of a discussion, that she wouldn't play at all! "The learned judge found," according to the report in the Times, "that the producers of the play, were not satisfied with the plaintiff's performance at Brighton, and that there was some discussion between them about it. He thought it probable that on the spur of the moment the plaintiff did say, 'Then I will not play at all,' but he was not satisfied that she put an end to the agreement in writing by refusing to play. The agreement between the parties provided that it could only be put an end to by writing, and there was in this case no formal refusal to play on the plaintiff's part. She was upset and emotional, and in the circumstances his Lordship came to the conclusion that she did not intend to resign, and he gave judgment for the plaintiff for £417.17s." An appeal was taken but it failed.

Westward Ho!

Occasionally one hears a member of the Association say he cannot afford to give up his vacation to attend the American Bar Association meeting in summer. The argument cannot hold in 1922. He can do both. The selection of San Francisco as the place for holding the annual meeting permits the combination of an enjoyable and typical vacation with attendance at the sessions. The opportunities for sight-seeing on the trip to and from, and in and around, San Francisco are perhaps unequalled in this country. One may go and return by a different route, and thus visit the most picturesque scenes in the entire West. Incidentally, the railroad rates are lower than they have been for several years. The tourist rate of $86.00 from Chicago to San Francisco and return is extremely reasonable, all things considered.

Members are already beginning to consider the question of attending what all hope will be one of the greatest meetings in the history of the Association: great not only in point of attendance and enthusiasm, but also because of the vastly important movements now under way, and to be inaugurated, for the benefit of legal administration and the country at large. Treasurer Frederick E. Wadhams has recently sent out to the membership a circular about the meeting. He calls attention to eleven routes from which the member may select, both for the going and return trip. Already, according to the circular, some members have written of their intention to organize parties in their communities and secure an entire car, or cars, for their accommodation. This will be a most attractive way to make the outgoing trip, and Mr. Wadhams suggests that members who intend to go to San Francisco communicate as soon as possible with their fellow members, for the purpose of organizing and making arrangements for such parties.

The most advanced of these plans as yet reported is that of a committee of the Chicago Bar Association, of which Mr. Thomas Francis Howe, No. 7 South Dearborn St., Chicago, is chairman. This party will have an entire special train, which will leave Chicago on Sunday, July 30, at 10 P. M., and arrive at San Francisco at 8 A. M., August 8, the day before the meeting of the Bar Association, and in time for the conference of the Commissioners on Uniform State Laws. The plan includes a three-day trip in Yellowstone Park; a day's stop en route to visit Pike's Peak, Manitou, the Garden of the Gods, the Cave of the Winds and the Seven Sisters Falls; passage en route through the Royal Gorge, Tennessee Pass, Eagle River Canyon and the Canyon of the Grande by daylight; a sight-seeing trip through Salt Lake City, an organ recital in the famous tabernacle, and a trip to Great Salt Lake. The committee desires as many of the members as possible from various states to join it on this trip, and Mr. Howe will gladly furnish information to those who desire it.

PLAINTIFF'S ATTORNEYS, BARDELL vs. PICKWICK

Careful Examination of Their Conduct in Celebrated Lawsuit Fails to Justify Aspersions Cast on Dodson and Fogg or Subsequent Popular Odium Attaching to Their Names

By William Renwick Riddell
Justice of the Supreme Court of Ontario

THIS is perhaps the most celebrated of Common Law cases, not from any element of legal principle but solely from the literary skill of the Reporter. The action was a simple action in the Court of Common Pleas in Case in Assumpsit, the cause of action being Breach of Promise of Marriage; but the Reporter was Dickens—not John Dickens, Senior Register of the High Court of Chancery, against the accuracy of whose reports much has been and more could be said—but Charles Dickens, "the best and most rapid Reporter ever known," as he says himself—but then he was a Parliamentary Reporter in whom no one looks for accuracy.

In no instance has the principle been better exemplified, "No defence; abuse the plaintiff's attorneys" —not at the trial, indeed, but before the public.

It is not intended in this article to review the case at length or in detail: the object in view is to examine into the justice of the animadversions, express and implied, upon the plaintiff's attorneys, Messrs. Dodson and Fogg of Freeman's Court, Cornhill, against whom, solely by reason of the statements concerning them by the defendant and this Reporter, there has been for many years a strong public sentiment amounting almost to execration.

Every fair-minded person will cast from his mind any impression derived from the vituperation of the defendant; every litigant detests the solicitors on the other side; not even the most magnanimous can bring himself to believe that they are not at the bottom of the litigation, either advising and putting up the plaintiff to advance an unjust claim or inducing the defendant to resist a claim wholly just.[1]

Accordingly, when Samuel Pickwick received the courteous letter from Dodson and Fogg informing him that on the instructions of Mrs. Martha Bardell they had issued a writ for breach of promise of marriage and asking the name of his attorney in London who would accept service, it was wholly natural that he should at once and without the least enquiry launch out against them, charge them with conspiracy—"a base conspiracy between these two grasping attorneys, Dodson & Fogg . . . a vile attempt to extort money." So far as appears, Pickwick had never heard of them before; but it was inevitable that when they issued a writ against him, they should become, in his mind, a pair of scoundrels, "vile conspirators"; he did not stay to think that Parliament had, more than four centuries previously in the reign of the good King Henry of Lancaster, in 1402, prescribed by solemn statute that "all attorneys shall be good and virtuous and of good Fame" (qi sont bons & virtuoses & de bon fame); these attorneys were aiming at his pocket and that was enough. The kind of man the defendant was plainly appears by his "abhorrence of the cold-blooded villainy" of Counsel for the plaintiff courteously saluting his own Counsel, Serjeant Snubbin.

Nor should any dependence be placed upon the seeming slurs of Mr. Perker of Gray's Inn, attorney for the defendant. He had at first declined to join in his client's characterization of Dodson and Fogg as "great scoundrels," but when he was trying to persuade him to act like a reasonable man and get out of gaol, he fell in with Pickwick's whim and called the Attorneys (at least by implication) "a couple of rascals" and suggested that they might soon "be led into some piece of knavery." That was said in coaxing an obstinate wrong-headed man, and he said in the same conversation that he could not say that, even with Mrs. Bardell's letter, there was anything to justify a charge of conspiracy.

Perker had characterized them as "very smart fellows, very smart fellows, indeed"; and later as "capital fellows with excellent ideas of effect"—his clerk, Mr. Lowton, said that they were "capital men of business" —and at the very end of the matter when his client was loading the attorneys with opprobrious and offensive epithets, "mean, rascally, pettifogging robbers," Perker never ceased to expostulate, but continued to call them "my dear sirs." One cannot, of course, build much upon this façon de parler—Perker called every one, "My dear sir," whether he was Wardle or Jingle, Pickwick or Fogg.

Neither should too much dependence be placed on Mrs. Bardell's ex post facto statements in her letter to Perker that the "business was, from the very first, fomented, encouraged and brought about by these men."[2] "These men" had put her in gaol, and she was trying to induce Pickwick to get her out; naturally, she would try to exculpate herself and inculpate those who had gaoled the person she was trying to influence to help her. Moreover, what do these general words, "fomented, encouraged, brought about," mean? Do they

1. I find that I have unwittingly plagiarized Samuel Warren, Q. C. (or is it an example of unconscious memory?) in his "Ten Thousand a Year," a book I have not read for half a century. Warren who, himself, drew the portrait of Quirk, Gammon and Snap in most unflattering lines, says: "There will probably never be wanting those who will join in abusing and ridiculing attorneys and solicitors. Why? In almost every action at law, or suit in equity, or proceeding which may, or may not, lead to one, each client conceives a natural dislike for his opponent's attorney or solicitor. If the plaintiff succeeds, he hates the defendant's attorney for putting him (the said plaintiff) to so much expense, and causing him so much vexation and danger, and, when he comes to settle with his own attorney, there is not a little heart-burning in looking at his bill of costs, however reasonable. If the plaintiff fails, of course it is through the ignorance and unskilfulness of his attorney or solicitor, and he hates almost equally his own, and his opponent's attorney! Precisely so is it with a successful or unsuccessful defendant. In fact, an attorney or solicitor is almost always obliged to be acting adversely to some one of whom he at once makes an enemy; for an attorney's weapons must necessarily be pointed almost invariably at our pockets! He is necessarily, also, called into action in cases when all the worst passions of our nature—our hatred and revenge, and our self-interest—are set in motion."

2. This letter was not produced, and we cannot say what was its precise language—probably Perker paraphrased it; no such phraseology was within the powers intellectual or literary of Martha Bardell. She never got higher than "do these things on speculation"—the same terminology is used by her friend, Mrs. Cluppins, which Sam Weller transforms into "does these sorts of things on spec." We must take Perker's word for it that this letter was brought to his office before he "held any communication with Mrs. Bardell"; but one would like to know how the letter came to be written at all. Perhaps Mr. Lowten could have given some clue.

No court would think of accepting Perker's version of the contents of this letter and no valid reason is given for its non-production even to Pickwick.

mean anything more than that, on her statement of the facts, she had in their opinion a good cause of action, that they would advise suit, and would not charge her any fees unless the action was successful? Attorneys and Solicitors must take the facts as they are disclosed to them by their clients, unless they are obviously misstated. In the present case, there can be no doubt that the plaintiff believed that Pickwick had offered her marriage—she does not to the very end suggest any other belief, and no bad faith is attributed to her even by the Reporter. That her friends had the same belief is obvious both from their conversation and their evidence at the trial. His own friends were rather more than suspicious; at the time Tupman, Winkle and Snodgrass "coughed slightly and looked dubiously at each other," evidently suspecting Pickwick and incredulous of his innocence. When the letter announcing action was received, Wardle *hoped* that the action was only "a vile attempt to extort money," but said so "with a short dry cough," and thought Pickwick a "sly dog." Tupman saw the plaintiff "certainly . . . reclining in his arms," and Winkle noticed that his "friend was soothing her anguish"; even the ever-faithful Samuel Weller thought "the hemperor," "a rum feller . . . makin' up to that ere Mrs. Bardell . . . alvays the vay with these here old 'uns hows'ever, as is such steady goers to look at."

Moreover, there is much to indicate legal liability in any aspect of the case. While there can be no doubt that Mrs. Bardell thought Pickwick had proposed to her, it is said that Pickwick had no such intention, that there was no *consensus ad idem* and therefore there was no contract. This is a partial view of the facts; the law is clear that whatever a man's real intention may be, if he so conducts himself that another person would reasonably believe that he means to assert something and that he means that the other person should act on the assertion, and another does so believe and act, the man is legally in the same position as though he had actually made the assertion.

Pickwick apparently did not intend to propose marriage; but his conduct was at least equivocal. The plaintiff's child was got out of the way by Pickwick; he was obviously embarrassed, he asked Mrs. Bardell if it was a much greater expense to keep two people than to keep one and went on in such a way that any woman in Mrs. Bardell's place might reasonably think he was proposing marriage; and she did think it. Even without Pickwick's asking the boy if he should not like to have another father, there was already ample upon which to found an action. Then just consider Pickwick's subsequent conduct: he must have known the construction placed upon his words by Mrs. Bardell, but he did not go to her like a man and explain that it is all a mistake on her part; he continues on his tenancy and went off himself to Eatanswill without a word of explanation. No attorney would be justified in advising against an action with such facts available.

It is made a crime in these attorneys that they agreed not to charge any fees except in case of success. Sam Weller gave evidence at the trial that Mrs. Bardell and her friends had said that they were "to charge nothin' at all for costs, unless they got 'em out of Mr. Pickwick"—it was "on speculation." But Weller, who the Reporter boasts was not simply desirous of telling "the truth, the whole truth and nothing but the truth" but of "doing Messrs. Dodson and Fogg's case as much harm as he conveniently could," adds to what he was really told. All that was said was said by Mrs. Cluppins—"Won't Mr. Dodson and Fogg be wild if the plaintiff shouldn't get it, when they do it on speculation?" It is Weller himself who puts the gloss on this language, "the other kind and gen'rous people o' the same perfession as sets people by the ears, free gratis for nothin' and sets their clerks to work to find out little disputes among their neighbours and acquaintances as wants settlin' by means of lawsuits." There is no semblance of evidence that Dodson and Fogg did anything of the kind, *but* they had sued Sam's master.

Even if the Attorneys agreed not to charge Mrs. Bardell anything, this was in no way improper in law or in ethics. It is the pride of the profession of law that no person however poor is ever prevented from pressing an honest claim from want of means; scores of actions have been, and scores more will be, brought for impecunious clients by solicitors who can have no possible hope of payment, even for out of pocket disbursements, unless they are successful and so get their costs out of the defendant. As I write this, I find in a Toronto paper, a letter from a practitioner of high standing in which he speaks of an action carried on to judgment by a solicitor for a plaintiff "without a dollar because the woman had not a dollar to give him . . . his costs amounted to $1,000 and he felt that he could not afford to pay out any more money." No one would think of finding fault with that solicitor. If that was the real bargain it was enforceable at law, the *cognovit* of Mrs. Bardell was fraudulent and could be attacked, as could the judgment against her which was based upon it and under which she was imprisoned. Such conduct would be plain dishonesty and wholly inexcusable; but it has nothing to do with the conduct of the Attorneys toward Pickwick which is the object of so much animadversion. It is plain that Perker did not think any thing of the kind could be established—"they are too clever for that."[3]

The probability is that Dodson and Fogg took the case on spec', in the sense that they agreed not to charge any costs unless they succeeded in the action, in which case they had the right to take a cognovit and sign judgment on it—for, as Chief Baron Pollock says, they guaranteed the solvency of the suit and not that of the defendant.[4]

It would not be astonishing if the attorneys "encouraged" the plaintiff. No one who has practised law but can tell of clients losing heart and hope and requiring encouragement; if that were a crime, few would escape. It is always the person who is trying to keep the plaintiff out of his legal rights who is indignant at the lawyer "encouraging" the plaintiff.

Much is said about "sharp practice." Lowten says: "sharp practice, theirs—capital men of business. Dodson and Fogg, Sir." Pickwick "admits the sharp practice of Dodson and Fogg"; Lowten again: "the sharpest practitioners I ever knew," and Perker chimes in, "Sharp! There's no knowing where to have them?" and the Reporter complains of "the plaintiff having all the advantage derivable not only from the force of circumstances but from the sharp practice of Dodson and Fogg to boot." What does this mean, or does it mean anything?

"Sharp practice" means taking advantage of the rules of practice to embarrass an opponent, to put him

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3. If the treatment by "old Fogg" of the defendant Ramsey in the action of Buttman v. Ramsey is truly reported, it was a scoundrelly dishonest action—but was it not a "guy" by Mr. Weeks, intended to gull the visitors and quite understood by the other three clerks? Everyone knows the story of Frank Lockwood, horrifying Bench and Bar in the United States by telling of his taking the "best alibi that was offered."

4. In re Stretton (1845), 14 Meeson and Welsby's Reports, 806.

to unnecessary costs, to hide behind technicality, to do anything to prevent a fair trial by tampering with witnesses, keeping witnesses away or in any other way; in a word, to take an unfair advantage by rules of practice or otherwise. There is not the very slightest evidence of anything of the kind; the writ was issued regularly, proper notice of it was sent, when the defendant did not name a solicitor he was personally served, the witnesses subpoenaed were in no way tampered with, Counsel for the defendant did not dispute the substantial accuracy of their evidence, the strongest evidence against him was given by his own friends—and what can be more childish than his complaint of the intention of the attorneys "to seek to criminate me upon the testimony of my own friends"? Perker said (as any man of ordinary reason or fairness would say) that of course they would do so, he knew they would. No solicitor who did his duty by his client would fail to subpoena such important witnesses, who had seen the defendant in the "delicate situation." There was no sending by *them* of an agent, clandestinely and behind the back of the lawyer on the other side, to try and find out what the other side was doing, as was done by Pickwick when he sent Sam to "ascertain how Mrs. Bardell herself seems disposed towards me." Perker "drew himself up with conscious dignity" and rebuked his client for this underhanded proceeding. Perker's suspicion was that Sam was subpoenaed to prove an offer of compromise which was not in fact made. No such evidence was attempted and nothing was attempted to be proved at the trial but what undoubtedly took place.

If either side is to be charged with sharp practice, is it not the side which deliberately chose the course to call no witnesses but trust to Counsel's eloquence, to throw dust in the eyes of the Judge and throw itself upon the jury? Is it any wonder that experienced Counsel like Serjeant Snubbin, when he heard the course proposed to be followed, smiled, "rocked his leg with increased violence and . . . coughed dubiously"? It is quite plain that he had no confidence in his case; nor had Perker. And yet there has never, so far as I know, been any reflection upon the course taken by Perker; all the blame is thrown on Dodson and Fogg. The trial was carefully prepared for, every legitimate means of impressing the jury with the merits of the plaintiff's case was thought out; Perker bore witness to the excellent ideas of effect and admitted, "Capital fellows those, Dodson and Fogg." No one can say that all this was not in the direct line of their plain duty to their client. They retained as Counsel the best man they could. It may be that Serjeant Snubbin was at the very top of his profession and that he was said to lead the Court by the nose; he certainly conducted the defence with skill.[5] "He did the best he could for Mr. Pickwick," but Serjeant Buzfuz was a first-class man to entrust with a plaintiff's Brief at the trial, and his junior, Mr. Skimpin, also showed capacity as a Nisi Prius Counsel. The case was fairly fought, there was no sharp practice, the facts as detailed by the witness were not disputed, the judge's charge was unexceptionable, the jury was a Special Jury, Pickwick's own lawyer did not believe in his case, and the result was inevitable.

Of course those who are taken to law "for the first time, may be allowed to labour under some temporary irritation and anxiety," but Pickwick had had a run for his money, the jury had decided against him as they on their oaths thought right and just, and one might have expected something like sportsmanlike spirit from him. But the childishness which saw in Serjeant Buzfuz' courteous greeting to his brother Snubbin nothing but abhorrent and "cold blooded villainy" did not desert him; "speechless with indignation"—at what?—he determined not to pay a farthing of damages or costs.

It is to be observed that this position was taken not by way of protest against an unjust law such as the "Passive Resisters" protested against. That would be at least deserving of respect; this was nothing but sheer wrongheadedness. The many amiable and lovable features of Mr. Pickwick's character should not blind us to his pompous self-importance and total disregard of the opinions and wishes of others, his perfect conviction of his own infallibility and his intolerance of resistance to his fiat.

Of course, the plain duty of Dodson and Fogg was to compel payment of the damages and it was equally their plain duty to compel payment of their costs by Pickwick in ease of their client.

The defendant had no goods exigible under a Fieri Facias, no crops to seize under a Levari Facias, no lands to seize under an Elegit, attachment of debts was not yet allowed by law, nothing remained but to attach the defendant's person. He, of course, must needs talk of them being "vile enough to avail themselves of . . . legal process against" him. What did he suppose they or any other attorneys would do?

There has been much popular condemnation of Dodson and Fogg for imprisoning Pickwick. No one ever complains of the attorneys retained by Lord De la Zouche sending to a debtors' prison at York Castle the Reverend Smirk Mudflint and Barnabas Bloodsuck, Jr.; it all depends upon whose ox is gored.

If there is to be an attorney to be blamed for deceit, it must be Perker. He is said to have told Pickwick that the only way to get Mrs. Bardell from the Fleet was for him to pay "into the hands of these Freeman's Court sharks" the costs of Bardell v. Pickwick, "both of plaintiff and defendant." Of course, that was not true; what should be paid to release Mrs. Bardell was the amount of the judgment against her, including costs, and that would be the plaintiff's costs, "Solicitor and Client," in Bardell v. Pickwick, with the added costs in Dodson et al. v. Bardell; the defendant's costs in Bardell v. Pickwick could not enter into the calculation at all. If Perker did say anything of the kind he was dishonestly trying to get his own costs paid; and that, it is probable, no one will charge him with.

Unless there is a mistake, Dodson and Fogg accepted "the taxed costs, £133-6-4" in full; and that would be a generous concession. However, they continued to be with Pickwick and Pickwick's admirers, "a well-matched pair of mean, rascally, pettifogging robbers."

And how many admirers has the inimitable Pickwick, obstinate, wrong-headed, prejudiced, overbearing, inconsiderate Old Fireworks as he was? Because he loved his fellow men—the real sin of Dodson and Fogg was that they did not.

Osgoode Hall, Toronto.

5. I copy here some remarks written by me in another connection: "I have no sympathy with the current notion that Serjeant Snubbin was hopelessly outclassed by Buzfuz, great Counsel as Buzfuz was. I have carried too many Briefs for the Defendant not to appreciate Snubbin's position; he had to sit and watch for holes in the plaintiff's case, to admit what he knew could be proved (thereby diminishing the effect on the jury), to avoid pitfalls, to let well enough and ill enough alone. See what happened to his junior, the unhappy Phunky—of course, he was "a very young man . . . only called the other day . . . not been at the Bar eight years yet"—when he did not sit down when Serjeant Snubbin winked at him, but continued to cross-examine the too-willing Winkle. It had been determined in advance not to call witnesses for the defense, and it is hard to see what the Serjeant could have done which he did not do. *Crede experto*, the lot of defendant's counsel in such cases is not a happy one."

REVIEW OF RECENT SUPREME COURT DECISIONS

Federal Employer's Liability Act and Fellow Servant Doctrine—Notice of Personal Injury to Carriers—Right of Foreign Corporations to Resort to Federal Courts—Other Constitutional Cases Involving State Statutes—The Merchant Marine Act—Nineteenth Amendment Upheld—When Interstate Commerce Commission May Regulate Intrastate Rates

By Edgar Bronson Tolman

Carriers—(a) Negligence of Fellow-Servant

In action under Federal Employers' Liability Act, employee does not assume risk of fellow servant's negligence.

Reed, admx., v. Director General of Railroads. No. 78, Adv. Ops. 264.

A judgment for damages for the negligent killing of plaintiff's intestate, while employed as a brakeman in interstate commerce, was reversed by the Supreme Court of Pennsylvania on the ground that the proximate cause of the fatal injury was the negligence of his engineer and that decedent had assumed the risk of such negligence. Certiorari to the Supreme Court of Pennsylvania was allowed and the judgment of that Court reversed.

Mr. Justice McReynolds delivered the opinion of the Court and reviewing the leading cases on the Federal Employers' Liability Act and the doctrine of assumed risk (Seaboard Air Line v. Horton, 233 U. S. 492; Second Employers' Liability Cases, 223 U. S. 1, 49; and C. R. I. & P. Ry. Co. v. Ward, 252 U. S. 18) the learned Justice concluded his opinion as follows:

> In actions under the Federal Act the doctrine of assumption of risk certainly has no application when the negligence of a fellow servant which the injured party could not have foreseen or expected, is the sole, direct and immediate cause of the injury. To hold otherwise would conflict with the declaration of Congress that every common carrier by railroad while engaging in interstate commerce shall be liable to the personal representative of any employee killed while employed therein when death results from the negligence of any of the officers, agents or employees of such carriers.

The judgment of the Supreme Court of Pennsylvania was accordingly reversed and the cause remanded for further proceedings not inconsistent with the opinion.

The case was argued for the administratrix by Mr. John J. McDevitt, Jr., and for the Director General by Mr. William Clarke Mason.

Carriers—(b) Notice of Injury

Holder of drover's pass may lawfully be required to give notice of personal injury within 30 days.

Gooch v. Oregon Short Line. No. 90, Adv. Ops. 285.

Gooch, traveling with cattle on a drover's pass, agreed in consideration of the pass that the carrier should not be liable for any injury to him on the trip unless he or his personal representatives within thirty days of the injury should give notice in writing of his claim to the carrier's general manager. He was injured, was in a hospital for about 30 days under the care of a physician employed by the carrier, was not disabled from giving the notice, but failed to give it. The District Court directed a non-suit, its judgment was affirmed by the Circuit Court of Appeals, Ninth Circuit, the Supreme Court granted a writ of certiorari to review the judgment of the latter court, and affirmed it.

Mr. Justice Holmes delivered the judgment of the Court and said:

> The only question is whether the requirement of notice in writing was valid. The railroad company does not contend that it could have exonerated itself altogether from liability for negligence, but argues that a stipulation for written notice within a reasonable time stands on a different footing, and of this there is no doubt. (Cit.)
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> The doubt that led to the granting of the writ of certiorari was whether the prohibition of a requirement fixing less than ninety days for giving notice of claims in respect of goods established a public policy that would affect the present case. For although courts sometimes have been slow to extend the effect of statutes modifying the common law beyond the direct operation of the words, it is obvious that a statute may indicate a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind.
>
> We are satisfied, however, that in this case the requirement was valid and that the statute referred to should not affect what in our opinion would be the law apart from it. The decisions that we have cited show that the time would have been sufficient, but for the statute, in respect of damage to goods, and the reasons are stronger to uphold it as adequate for personal injuries. A record is kept of goods, yet even as to them reasonably prompt notice is necessary as a check upon fraud. There is no record of passengers, and the practice or fraud is too common to be ignored. Less time reasonably may be allowed for a notice of claims for personal injuries than is deemed proper for goods, although very probably an exception might be implied if the accident made notice within the time impracticable.

Mr. Justice Clarke delivered a dissenting opinion, in which the Chief Justice and Mr. Justice McKenna concurred. The learned Justice stated the grounds of his dissent to the rule announced by the majority opinion as follows:

> (1) Because such a rule, as to property claims, has twice within six years been specifically declared by acts of Congress to be contrary to a public policy which I think it is the duty of this court to recognize and accept with respect to injuries to passengers, and (2) because in practice the rule is gravely unjust and discriminatory and therefore unreasonable.

Citing the provisions of the Cumming's Amendment to the Interstate Commerce Act and its re-enactment in the Transportation Act declaring it unlawful for a carrier to provide by rule or contract for a shorter notice than 90 days of claims for injury to goods, the learned Justice said:

> These two acts of Congress providing that any rule, regulation or contract for limitation of notice to less than ninety days, shall be unlawful, are such unmistakable declarations of public policy as to a shorter notice limitation, under any circumstances, that in my judgment it should be applied to claims for personal injury, even though the statute, in terms, applies only to damages to property, unless there are cogent reasons for distinguishing

the two classes of claims from each other. Congress should not have a ninety-day reasonable standard in such matters and this court a thirty-day standard.

Answering the argument of the majority opinion that there was greater need of protection from fraud in personal injury cases than in cases for injury to goods the learned Justice said:

With all deference, I submit that the reason thus given is unsound, because the likelihood is much greater that fraudulent claims will be made for injuries to goods than to persons, for the reason that most goods are packed for shipment and whether they are damaged or not cannot be discovered until they are unpacked after having left the custody of the carrier, but it must be rare indeed that a passenger can be injured except in the presence of some one or more of the carrier's agents. Such living and alert witnesses are a much better protection against fraud than the indefinite and hurried record that is kept of goods.

On the question of discrimination he said:

That a notice rule so short as thirty days must result in discrimination seems to me clear, also, because of that characteristic of human nature, not sufficiently taken into account by many courts. Persons and property are usually transported so safely by rail that thought of damage rarely enters the mind of the occasional shipper or traveler, and from this it results that rules, such as we have here, are not read, or if read are not understood, couched, as they usually are, in forms of expression about the meaning of which courts are in constant disagreement, with the result that while the large shippers know of and keep within such rules and recover their losses, for the occasional small shippers they serve as a trap in which they are often caught and ruined. The Cummings Amendment is the protest of the country against the discrimination and hardship which many federal and state court decisions show resulted all over the country, from the enforcement of such a rule as to property claims.

To these reasons for holding the rule in this case unjust and discriminatory must be added the certainty, inherent in its form, that if enforced it will be an agency of grave injustice. . . .

. . . Many men are so badly injured in railway accidents that they are wholly incapable of making claim in writing within thirty days, and to prepare the way for a law suit is the last thought of a man who is seriously injured and suffering. It is true that the rule considerately permits the claims to be made by "the heirs and personal representatives" of one who may be killed—but if, unfortunately, he should die toward the end or very near the end of the thirty days, this astutely worded rule would cut out his dependents from all right to recover. The rule is a novel and cunning device to defeat the normal liability of carriers and should not be made a favorite of the courts.

The case was argued for Gooch by Mr. J. H. Peterson, and for the R. R. Co. by Mr. George H. Smith.

Constitutional Law—(a) Abridgment of Right to Resort to Federal Courts

The right of foreign corporations to resort to the Federal Courts may not be impaired by state law.

Terral v. Burke Construction Co. No. 93, Adv. Ops. 223.

The construction company, a Missouri corporation doing business in Arkansas and duly licensed by that state so to do, removed a suit against it to the Federal Court and brought a suit in that court against a citizen of Arkansas. A statute of that state made it the duty of the Secretary of State to revoke the authority of any corporation so resorting to the Federal Courts to do business in that state, and fixed a penalty of not less than $1,000 a day for doing business in the state after such revocation of its license.

The construction company filed a bill in the U. S. District Court, Eastern District of Arkansas, to enjoin the Secretary of State from revoking its license. The District Court granted the injunction, and the Secretary of State appealed. Affirmed.

The CHIEF JUSTICE delivered the opinion of the court and stated the controversy as follows:

The sole question presented on the record is whether a state law is unconstitutional which revokes a license to a foreign corporation to do business within the State because, while doing only a domestic business in the State, it resorts to the federal court sitting in the State.

Declaring that the prior cases on this conflict of authority had been examined and could not be reconciled, the learned Chief Justice said:

The principle established by the more recent decisions of this Court is that a State may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the State, exact from it a waiver of the exercise of its constitutional right to resort to the federal courts, or thereafter withdraw the privilege of doing business because of its exercise of such right, whether waived in advance or not. The principle does not depend for its application on the character of the business the corporation does, whether state or interstate, although that has been suggested as a distinction in some cases. It rests on the ground that the federal Constitution confers upon citizens of one State the right to resort to federal courts in another, that state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured is void because the sovereign power of a State in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the supreme fundamental law.

Argued by Mr. William Marshall Bullitt for the Construction Co.

Constitutional Law—(b) Due Process of Law

A state statute which fails to authorize suits against non-residents on causes of action arising in another state does not deny due process of law.

Missouri Pacific Ry. v. Clarendon Boat Oar Co. No. 102, Adv. Ops. 224.

The railway company, a Missouri corporation, sued the Clarendon Company, a New York corporation, in a Louisiana State Court for breach of a contract entered into and to be performed in the state of Arkansas. The Clarendon company appeared solely to challenge the jurisdiction. The state court dismissed the action, the highest court of the state to which the case could be taken affirmed the judgment, the Supreme Court of Louisiana declined to entertain a further appeal and the case was taken by writ of error to the Supreme Court of the United States, where the writ of error was dismissed.

The state statutes provided generally for the designation of agents by corporations for service, but the state courts held that these statutes were not intended to embrace transitory actions arising in another state.

The CHIEF JUSTICE delivered the opinion of the court and said:

The contention comes down to this, therefore, that it is a lack of due process for a state statute of procedure to fail to furnish a person, within the limits of the State, power to sue a non-resident corporation and take judgment for a cause of action arising in another State. Under Section 2 of Article IV of the federal Constitution, the citizens of each State are entitled to all privileges and immunities of citizens in the several States. This secures citizens of one State the right to resort to the courts of another, equally with the citizens of the latter State; but where the citizens of the latter State are not given a process for reaching foreign corporations, it is not apparent how non-citizens can claim it. Provisions for making foreign corporations subject to service in the State is a

matter of legislative discretion, and a failure to provide for such service is not a denial of due process. Still less is it incumbent upon a State in furnishing such process to make the jurisdiction over the foreign corporation wide enough to include the adjudication of transitory actions not arising in the State. Indeed, so clear is this that in dealing with statutes providing for service upon foreign corporations doing business in the State upon agents whose designation as such is especially required, this Court has indicated a leaning toward a construction where possible, that would exclude from their operation causes of action not arising in the business done by them in the State.

The learned Chief Justice cited the cases supporting this proposition and concluded his opinion as follows:

In these circumstances and this state of the authorities in this Court, it is frivolous to claim that a statute of procedure by its failure to give jurisdiction over foreign corporations, in transitory actions arising in another State constitutes a lack of due process of which plaintiff in error can complain. In such a case the writ must be dismissed. (Citing cases.)

Argued for the R. R. Co. by Mr. Allan Sholars.

Constitutional Law—(c) The Merchant Marine Act

An act which gives preference to the ports of a state over those of a territory (Alaska) is not obnoxious to Sec. 9, Art. 1, Federal Constitution, prohibiting preference to the ports of one state over those of another.

Alaska v. Troy. No. 392, Adv. Ops. 267.

Sec. 27 of the Merchant Marine Act of June 6, 1920, prohibits coastwise trade between ports of the United States, including Alaska, save in American bottoms, provided that under certain conditions the prohibition shall not apply to merchandise transported between points within the United States, excluding Alaska, over Canadian lines and connecting water facilities.

The bill of the Territory of Alaska and a shipper attacked the validity of this provision of the act as repugnant to Sec. 9, Article 1 of the Federal Constitution. The bill was dismissed on demurrer and on the appeal the decree of the District Court was affirmed.

Mr. JUSTICE MCREYNOLDS delivered the opinion of the Court. Assuming that the act gave preference to ports of the United States over Alaska, that Alaska had been incorporated into the United States and that the Constitution so far as applicable is binding on Congress when legislating in relation thereto, the learned Justice held that the clause of the Constitution relied on was by its own terms limited to the states and did not embrace territories:

The appellants insist that "State" in the preference clouse includes an incorporated and organized territory. This word appears very often in the Constitution and as generally used therein it clearly excludes a "territory." To justify the broad meaning now suggested would require considerations more cogent than any which have been suggested. Obviously, the best interests of a detached territory may often demand that its ports be treated very differently from those within the States. And we can find nothing in the Constitution itself or its history which compels the conclusion that it was intended to deprive Congress of power so to act. See Pennsylvania v. Wheeling & B. Bridge Co., 18 How. 421; Knowlton v. Moore, 178 U. S. 107.

Downes v. Bidwell, 182 U. S. 244, was distinguished and Rasmussen v. U. S. was declared apposite.

Argued by Mr. John Rustgard, Attorney-General of Alaska for Appellants, and by Solicitor-General Beck for the Collector of Customs.

Constitutional Law—(e) Nineteenth Amendment—Validity of

In character the Nineteenth (Suffrage) Amendment cannot be distinguished from the Fifteenth. The function of a State legislature, in ratifying an amendment, is a federal function, and transcends any limitation sought to be imposed by the people of a state.

Leser v. Garnett. No. 553, Adv. Ops. 262.

Pursuant to a statute of Maryland explicitly authorizing such action, a suit was brought by qualified voters, against the Board of Registry, to strike from the lists two registered voters, citizens of Maryland, whose only alleged disqualification was that they were women, whereas the Constitution of that state limits suffrage to men. The legislature of Maryland had declined to ratify the Nineteenth Amendment. The petition was dismissed by the trial court, its judgment was affirmed by the Supreme Court of the State and on certiorari the Supreme Court of the United States affirmed the judgment of the State Supreme Court.

Mr. JUSTICE BRANDEIS delivered the opinion of the Court. After setting forth the course of the proceedings through the State Courts, the learned Justice said:

The first contention is that the power of amendment conferred by the Federal Constitution and sought to be exercised does not extend to this Amendment, because of its character. The argument is that so great an addition to the electorate, if made without the State's consent, destroys its autonomy as a political body. This Amendment is in character and phraseology precisely similar to the Fifteenth. For each the same method of adoption was pursued. One cannot be valid and the other invalid. That the Fifteenth is valid, although rejected by six States including Maryland, has been recognized and acted on for half a century. See United States v. Reese, 92 U. S. 214; Neale v. Delaware, 103 U. S. 370; Guinn v. United States, 238 U. S. 347; Myers v. Anderson, 238 U. S. 368. The suggestion that the Fifteenth was incorporated in the Constitution, not in accordance with law, but practically as a war measure which has been validated by acquiescence, cannot be entertained.

The second contention is that in the constitutions of several of the thirty-six States named in the proclamation of the Secretary of State there are provisions which render inoperative the alleged ratifications by their legislatures. The argument is that by reason of these specific provisions the legislatures were without power to ratify. But the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State. Hawke v. Smith, No. 1, 253 U. S. 221; Hawke v. Smith, No. 2, 253 U. S. 231. National Prohibition Cases, 253 U. S. 350, 386.

The remaining contention is that the ratifying resolutions of Tennessee and of West Virginia are inoperative, because adopted in violation of the rules of legislative procedure prevailing in the respective States. The question raised may have been rendered immaterial by the fact that since the proclamation the legislatures of two other States—Connecticut and Vermont—have adopted resolutions of ratification. But a broader answer should be given to the contention. The proclamation by the Secretary certified that from official documents on file in the Department of State it appeared that the proposed Amendment was ratified by the legislatures of thirty-six States, and that it "has become valid to all intents and purposes as a part of the Constitution of the United States." As the legislatures of Tennessee and of West Virginia had power to adopt the resolutions of ratification, official notice to the Secretary, duly authenticated, that they had done so was conclusive upon him, and, being certified to by his proclamation, is conclusive upon the courts. The rule declared in Field v. Clark, 143 U. S. 649, 669-673, is applicable here. See also Harwood v. Wentworth, 162 U. S. 547, 562.

Argued for Plaintiffs in error by Messrs. Thomas F. Cadwalader and William L. Marbury, and for

defendants in error by Mr. Alexander Armstrong, Attorney General of Maryland, and Mr. George Moore Brady.

Constitutional Law—(f) Interstate Commerce

The North Dakota grain grading and inspection act attempts to regulate interstate commerce and is therefore void.

Lemke v. Farmers Grain Co. No. 456, Adv Ops. 273.

This bill sought to enjoin the enforcement of the North Dakota grain grading and inspection act as an unlawful regulation of interstate commerce and on other grounds. Three Federal Judges heard and granted the motion for a preliminary injunction, but on the trial, an answer having been filed by the state and the officials charged with the enforcement of the act, the District Judge sustained the statute and dismissed the bill. This decree was reversed by the Court of Appeals, Eighth Circuit, which directed the issuance of a permanent injunction against the enforcement of the law. On appeal the Supreme Court affirmed the judgment.

Mr. JUSTICE DAY delivered the opinion of the Court, and, after disposing of a preliminary question of the jurisdiction of the Court of Appeals, the learned Justice said:

> We pass to a consideration of the merits. The record discloses that North Dakota is a great grain-growing State, producing annually large crops, for transportation beyond its borders. Complainants, and other buyers...are owners of elevators and purchasers of grain bought in North Dakota to be shipped to and sold at terminal markets in other States, the principal markets being at Minneapolis and Duluth. There is practically no market in North Dakota for the grain purchased by complainant. . . . The purchases are generally made with the intention of shipping the grain to Minneapolis. . . . The producers know the basis upon which the grain is bought, but whoever pays the highest price gets the grain, Minneapolis, Duluth or elsewhere. This method of purchasing, shipment and sale is the general and usual course of business in the grain trade at the elevator of complainant and others similarly situated. The market for grain is outside the State of North Dakota, and it is an unusual thing to get an offer from a point within the State. . . . At the terminal market the grain is inspected and graded by inspectors licensed under federal law. That such course of dealing constitutes interstate commerce, there can be no question.
>
> In view of this state of facts we come to inquire whether the North Dakota statute is a regulation of interstate commerce, and, therefore, beyond the legislative power of the State. . . . This Act shows a comprehensive scheme to regulate the buying of grain. Such purchases can only be made by those who hold licenses from the State, pay state charges for the same, and act under a system of grading, inspecting and weighing fully defined in the act. Furthermore, the grain can only be purchased subject to the power of the State Grain Inspector to determine the margin of profit which the buyer shall realize upon his purchase. This authority is conferred in Section 23, and the margin of profit is defined to be the difference between the price paid at the North Dakota elevator and the market price, with an allowance for freight, at the Minnesota points to which the grain is shipped and sold. That is, the State officer may fix and determine the price to be paid for grain which is bought, shipped, and sold in interstate commerce. That this is a regulation of interstate commerce, is obvious from its mere statement. Nor will it do to say that the state law acts before the interstate transaction begins. It seizes upon the grain and controls its purchase at the beginning of interstate commerce. Pennsylvania Railroad Co. v. Clark Brothers Coal Mining Co., 238 U. S. 456, 468.
>
> We agree with the Circuit Court of Appeals that this lation of interstate commerce when applied to complainlegislation is beyond the power of the State as it is a reguant's business.

Mr. JUSTICE BRANDEIS filed a dissenting opinion in which Mr. JUSTICE HOLMES and Mr. JUSTICE CLARKE concurred.

The following excerpts from the dissenting opinion reveal the points of controversy between the majority and minority of the Court:

> In 1919 the Legislature of North Dakota concluded that its farmers were being systematically defrauded in purchases of their grain made within the State. The buyers were largely local mills, of which there are 160, and local elevators, of which there are 2,200. The fraud was perpetrated, in part, by underweighing and undergrading in the unofficial inspection of the grain made locally by or on behalf of the purchasers. In part, the fraud was perpetrated by means of unconscionable bargains made locally, through which valuable dockage was obtained from the farmer without any payment therefor or by which the grain itself was bought at less than its fair value. Against such frauds the federal act did not purport to afford any protection.
>
> To protect the North Dakota farmer against these frauds practiced by local buyers its Legislature enacted chapter 138 of the Laws of 1919. The statute seeks to effect protection (a) by establishing a system of state inspection, grading and weighing; (b) by prohibiting anyone from purchasing grain before it is inspected, graded and weighed (except that one producer may buy from another); (c) by ascertaining in the course of inspection, grading and weighing, the amount of dockage, and requiring a purchaser of the grain either to pay separately for the dockage or to return the same to the farmer; (d) by requiring payment to the farmer of the fair value of grain —the value to be ascertained by fixing the so-called margin; (e) by ensuring compliance with the above provisions through the further provision that only persons or concerns licensed to inspect, grade and weigh may buy grain before it has been officially inspected.
>
> Ordinarily when a state's police power is exerted in connection with sales it is the buyer whom the law seeks to protect; and the seller is licensed as part of the machinery to enforce the regulations prescribed. I cannot doubt that the State has power as broad to protect the seller and, to that end, to license the buyer. . . . The requirement that the amount of the dockage shall be ascertained and that it shall be paid for separately or be returned, does not differ in principle from the requirement upheld in McLean v. Arkansas, 211 U. S. 539, that coal shall be measured before screening, or the requirement upheld in Knoxville Iron Co. v. Harbison, 183 U. S. 13, that store orders shall be redeemed in cash, or that upheld in House v. Mayes, supra, which prohibited, in the purchase of grain, making arbitrary deductions from the actual weight. The requirement that the buyer shall take only a proper margin for graded grain is, in effect, requiring that he pay a fair price. Laws designed to prevent unfair prices are ordinarily enacted to protect consumers. But there is no constitutional objection to protecting producers against unconscionable bargains, if conditions are such that it is they who require protection. *
>
> Whether the purchases involved in these cases were intrastate or interstate commerce we need not decide. For the fact that a sale or purchase is part of a transaction in interstate commerce does not preclude application of state inspection laws, unless Congress has occupied the field or the state regulation directly burdens interstate commerce. The requirement of a license and the payment of a $10 license fee, if applied to non-residents not regularly engaged in buying grain within the State might perhaps be obnoxious to the Commerce Clause. But the objection, if sound, would not afford this plaintiff ground for attacking the validity of the statute. Lee v. New Jersey, 207 U. S. 67. It is a North Dakota corporation, owner of an elevator within the State, and is carrying on business there under the laws of the State as a public warehouseman. Even if the margin clause should be held a burden upon interstate commerce, still that would not invalidate the whole statute. The margin clause is separable from the other provisions of the act; and it could be eliminated without affecting the operation of any other feature of the state system. Compare Presser v. Illinois, 116 U. S. 252; Bowman v. Continental Oil Co., 256 U. S. . . . To strike down this inspection law, instead of limiting the sphere of its operation, seems to me a serious curtailment

of the functions of the State and leaves the farmers of North Dakota defenseless against what are asserted to be persistent, palpable frauds.

Argued for the Attorney-General of North Dakota by Mr. Seth W. Richardson, and for the grain company by Mr. David F. Simpson.

Interstate Commerce Commission—Regulation of Intrastate Rates

The Interstate Commerce Commission may regulate intrastate rates where they work a prejudicial discrimination against persons engaged in interstate commerce.

Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co. No. 206, Adv. Ops. 236.

The Interstate Commerce Commission investigated into alleged discrimination against interstate commerce arising out of intrastate railroad rates in Wisconsin and made its report and order (59 I. C. C. 391).

It had previously investigated the interstate rates of carriers in the United States (58 I. C. C. 220) in order to comply with the amendatory section of the Transportation Act of 1920, which commanded the Commission so to adjust rates as to permit the earning of fixed net incomes. The Commission ordered an increase of the interstate rates for the carriers in the group which embraced the Wisconsin carriers, of 35 per cent in freight, 20 per cent in passenger fares and excess baggage charges, and a 50 per cent surcharge on that part of sleeping car charges accruing to carriers.

Thereupon the carriers applied to the Wisconsin Railroad Commission for corresponding increases in intrastate rates. These were granted as to intrastate freight rates, but were denied as to intrastate passenger fares and charges on the sole ground that a state statute prescribed a maximum passenger tariff of 2 cents per mile.

The Commission found that intra- and interstate passengers were carried on all trains in Wisconsin on the same trains and with the same service and accommodations. That travellers destined to or coming from points outside the state found it cheaper to pay the intrastate rate within Wisconsin and the interstate rate beyond its borders, and that undue prejudice and discrimination was shown by a great falling off in the sale of tickets from outside points and a corresponding increase in the sale of tickets from border points to stations within the state and the reverse. That the direct loss to the carriers would approximate $6,000,000 per year if the 2 cent statutory fare should become effective.

The Commission found that there was unjust discrimination against persons traveling in interstate commerce and against interstate commerce as a whole, and ordered that such discrimination should be removed by increases in intrastate passenger fares and charges corresponding to those ordered in interstate business.

The carriers filed bills in the U. S. District Court for the Eastern District of Wisconsin, to enjoin the State Commission from interfering with the rates thus ordered and published. Application for an interlocutory injunction was duly heard before three judges, they granted the writ, this appeal was taken to the Supreme Court and the order of the District Court was affirmed.

The CHIEF JUSTICE delivered the opinion of the Court and, after quoting the provision of the Transportation Act, which authorized the Commission, after prescribed investigation, to remove

> Any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate commerce,

defined the questions to be decided as follows:

> First. Do the intrastate passenger fares work undue prejudice against persons in interstate commerce, such as to justify a horizontal increase of them all?
>
> Second. Are these intrastate fares an undue discrimination against interstate commerce as a whole which it is the duty of the Commission to remove?

Considering these in their order the learned Chief Justice said:

> First. The report and findings of the Commission undoubtedly show that the intrastate fares work an undue discrimination against travellers in interstate commerce and against localities in typical instances numerous enough to justify a general finding against a large class of fares. In a general order thus supported, possible injustice can be avoided by a saving clause allowing any one to except himself from the order by proper showing. . . . Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute.
>
> The order in this case, however, is much wider than the orders made in the proceedings following the Shreveport and Illinois Central cases. . . . It includes fares between all interior points although neither may be near the border and the fares between them may not work a discrimination against interstate travellers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order. In such a case, the saving clause by which exceptions are permitted, can not give the order validity. As said by this Court in the Illinois Central R. R. case, "it is obvious that an order of a subordinate agency, such as the commission, should not be given precedence over a state rate statute, otherwise valid, unless, and except so far as, it conforms to a high standard of certainty."
>
> If, in view of the changes, made by federal authority, in a large class of discriminating state rates, it is necessary from a state point of view to change non-discriminating state rates to harmonize with them, only the state authorities can produce such harmony. We can not sustain the sweep of the order in this case on the showing of discriminations against persons or places alone.

Coming to the second of these questions the learned Chief Justice said:

> Second. The report of the Commission shows that if the intrastate passenger fares in Wisconsin are to be limited by the statute of that State to 2 cents per mile, and charges for extra baggage and sleeping car accommodations are to be reduced in a corresponding degree, the net income of the interstate carriers of the State will be cut six millions of dollars below what it would be under intrastate rates on the same level with interstate rates. Under paragraphs 3 and 4 of section 13 and section 15a as enacted in sections 416 and 422 respectively of the Transportation Act of 1920 (which are given in part in the margin), are such reduction and disparity an "undue, unreasonable and unjust discrimination against interstate or foreign commerce" which the Interstate commerce commission may remove by raising the intrastate fares? A short reference to the circumstances inducing the legislation and a summary of its relevant provisions will aid the answer to this question.

The limitations of space here do not permit us to follow the learned Chief Justice in his analysis of the pertinent legislation but his conclusion appears in the following quotations:

> It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new

measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill.

As to the relation of intrastate rates upon interstate rates the learned Chief Justice said:

> Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system.

Answering an objection of the State Commission that the Interstate Commerce Commission had no power to regulate traffic wholly within a state, the learned Chief Justice said:

> To this, the same answer must be made as was made in the Shreveport case (234 U. S. 342, 358), that such orders as to intrastate traffic are merely incidental to the regulation of interstate commerce and necessary to its efficiency. Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines, and while under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso.

To an ingenious argument based on the congressional debates and committee reports, he said:

> Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. But when taking the act as a whole, the effect of the language used is clear to the Court, extraneous aid like this can not control the interpretation. Such aids are only admissible to solve doubt and not to create it. For the reasons given, we have no doubt in this case.

On the question of the unconstitutionality of the act as construed by the Supreme Court, the learned Chief Justice said:

> Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce, it deems necessary or desirable. This is because of the supremacy of the national power in this field. (Citing cases.)

And from the Minnesota Rate cases, 230 U. S. at p. 399 he quoted the following:

> The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter.

Answering a final objection, he said:

> It is said that our conclusion gives the commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.

The learned Chief Justice closed his opinion with a practical suggestion as to the manner in which state and federal officials might co-operate to work out the problem.

> It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception. So, too, in practice when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion.

The case was argued for the R. R. Commission by Mr. M. B. Olbrich; for the R. R. Co. by Messrs. Bruce Scott and Alfred P. Thom; for the Interstate Commerce Commission by Mr. Patrick J. Farrell; and by Mr. John E. Benton as amicus curiae.

Power and Responsibility of Prosecuting Attorneys

"The powers of a district attorney under our laws are very extensive. They affect to a high degree the liberty of the individual, the good order of society and safety of the community. His natural influence with the grand jury, and the confidence commonly reposed in his recommendations by judges, afford to the unscrupulous, the weak or the wicked incumbent of the office vast opportunity to oppress the innocent and to shield the guilty, to trouble his enemies and to protect his friends, and to make the interest of the public subservient to his personal desires, his individual ambitions and his private advantage. The authority invested in him by law to refuse on his own judgment alone to prosecute a complaint or indictment enables him to end any criminal proceeding without appeal and without the approval of another official. Powers so great impose responsibilities correspondingly grave. They demand character incorruptible, reputation unsullied, a high standard of professional ethics, and sound judgment of no mean order."—From opinion of Supreme Judicial Court of Massachusetts in the matter of Attorney-General vs. Nathan A. Tufts.

SHOULD THE PUNISHMENT FIT THE CRIME OR THE CRIMINAL?

Need for Individualization of Punishment Having Reference Not Only to Objective and Subjective Nature of Act But Also True Nature of Offender and Possibility of Social Redemption*

By Hon. Edward R. Meek

Federal Judge Northern District of Texas

THERE has existed for many decades a spirit and determination on the part of the makers of penal codes and the courts to measure the criminality of acts not only by their objective but their subjective qualities as well and to assess punishment according to the true responsibility of the offender.

There is now a growing social tendency, a humane and laudable tendency, toward the enactment of laws providing for individualization of the punishment to be meted out to the offender, having reference not alone to the objective and subjective nature and quality of his act, but also to the true nature of the individual, to his age, his past record and the possibility of his redemption to social and moral worth.

In the case of each individual offender there stands before the court and judge a human being whose moral and social future constitutes a grave problem. It is a problem not easy of even approximately correct solution. In its solving there should be kept in view not only the interest of society and social order, but also the interest of the human being and his moral and social future. We may admit that the sacrifice of the individual is of small importance in comparison with the interest of social order; but in conserving social order we should not ruthlessly ignore or unnecessarily destroy the moral and social future of the erring member. Society itself suffers more or less from the ruthless and haphazard administration of automatic criminal laws. Some of the results of the administration of such laws are the heavy penalizing of the semi-responsible, of the first and the chance offender, and the occasional setting free of the hopelessly vicious and obstinately criminal. The youthful or chance offender may stand before the court for punishment and if the jury or the judge may not give consideration and attention to the subjective nature and quality of the offender's act and to the true nature of the offender himself, either in connection with or apart from his immediate wrongful act, he may be thrown into prison, where a promiscuous intercourse with habitual wrong-doers will serve to contaminate and cause him to embark in a career of crime. Only last week in my chambers at Dallas, a father bent over me and poured into my ear the pathetic story of his child gone wrong. A boy of fifteen years of age was permitted to sleep in a combined store and post-office in the town of ——— in this, Dallas County. He got up in the night, robbed the post-office of its cash and ran away. Through the efforts of the officers, assisted by his father, he was apprehended and placed in the Dallas county jail to await the action of the grand jury. This boy, a mere child, had been placed in a common cell with adult criminals, there to be kept and possibly ruined by his association. The father acknowledged the waywardness of his boy, but could he be blamed for feeling embittered and complaining of this manifest wrong perpetrated in the name of the law upon his child? I regret to say that this situation was brought about in the ordinary course of procedure and as a preliminary step at the very commencement of proceedings against the youthful offender. Instances like the foregoing are not unusual or exceptional. Thoughtful men and women realize that under such conditions we have not criminals to be punished but children to be corrected and saved. Should not the intelligence and heart of every community have caused this cogent and momentous fact to have adequate expression in the law providing treatment for juvenile offenders?

The last regular session of the Texas legislature, recognizing the wrong and the evil results flowing from penal confinement of children with such associates, passed an act relative to juvenile offenders, reading in part as follows:

> That no child within the provisions of this Act shall be incarcerated in any compartment or jail or lock-up in which persons over eighteen years of age are being kept or detained; and further, provided that it shall be the duty of all counties with a population of over one hundred thousand to provide a suitable place for the detention of children coming under this act, separate and apart from any jail or lock-up in which older persons are incarcerated.

Men and women instinctively realize and dread the fearful consequences resulting from the association of youthful offenders with older and habitual criminals. It is a conceded fact of criminal psychology that the youth or child who shares his life with degenerates assimilates his character to theirs. May the authorities of this rich and populous county hasten to comply with the salutary and humane provisions of this law—would that all organized counties in Texas were in position promptly to comply with them.

In making penal codes and fixing terms and kinds of punishment for crime the law-making powers must have always in view the two most essential and vital purposes: the protection of society from acts of a like nature and the appropriate chastisement of the in-

*Note by Author: This is a paper I read before the Critic Club of Dallas, Texas, in 1914, on the individualization of punishment. Before the world war the breaker of our criminal laws received much consideration at the hands of our courts when standing before them to be punished. However, subsequent to the war and with the still increasing volume of crime present in our country, I thought judges and juries in the discharge of their trying and arduous duties in our criminal courts might be giving less thought and study to the case of the individual wrong-doer standing before them than in the former days, this because of the great number they are called upon to chastise for wrong doing. However, the individual should have as much or even more consideration today by judges and juries than was given him in the earlier days, this that the casual wrong-doer may not be punished as an incorrigible or the incorrigible as a casual wrong-doer, this danger being always present. I hope you may give this paper space in our Journal.

dividual for his wrong deed. The character and qualities of the objective act should always be considered and have material if not controlling weight in determining the nature and amount of punishment to be provided. But I am a firm believer in the efficacy of certainty and sureness of punishment rather than severity in duration or kind to accomplish deterrent results. The criminal who goes unwhipped of justice gives rise to succeeding offenses and tends to bring our courts into contempt. I am inclined to believe that the treatment necessary effectively to protect society from the recurrence of criminal acts is ordinarily an appropriate measure of the chastisement which should be inflicted upon the individual. To illustrate: if a year's imprisonment of A for the commission of a crime will deter B, C and D from committing a like crime, I consider that the year's imprisonment is also an appropriate measure of punishment to inflict upon A to appease the resentment of the injured social organization. This, of course, would not be sufficient protection for society in the case of a recidivist or degenerate. However, to the extent that it may be accomplished without sacrificing the two main purposes above stated, I believe there should be worked out a system of individual punishment.

It is necessary that criminal laws should be made to cover classes of crimes and criminals. They must convey in clear terms the definition of the objective acts denounced. They may create and distinguish between the grades of crime and give expression to reasons which shall weigh in extenuation or aggravation of punishment. But laws fixed for all and in advance of any case arising under them may not have regard for the individual. They may not go further than to deal with and fix the question of responsibility. They may not deal with the true nature of the individual. For this function it is necessary to repose latitude and discretion with some authority under the law. Criminal statutes may be so framed as to provide such varied forms of punishment and latitude of sentence within fixed limits that constituted authority will have room to individualize and for the exercise of discretion in the case of each offender.

Sporadic steps have been taken by legislative bodies looking to the individualization of punishment. The Congress of the United States passed a law for the parole of prisoners serving terms in their penitentiaries. This law is executed by duly constituted parole boards. Their decisions are based upon the past record of the criminals and upon their course of conduct while in the penitentiaries. I have observed the effect of this law in individual cases. After the doors close upon the victim and through the succeeding days a deepening consciousness of what he has lost permeates and takes hold of him. As the days pass the constraint imposed by prison walls becomes harder and harder to endure, and freedom more and more eagerly craved. He looks to the future which is dark, but it holds for him the possible boon of early release. He seeks to learn of the law of parole. Unless utterly abandoned, he becomes alert to repossess the freedom he has lost at an earlier day than that fixed by his sentence. He also dwells upon the fact that in securing a parole there is some salvage—a retrieval in part of his wrecked life. He works for his parole. He conforms to the regulations of the institution. He seeks from the judge who sat in his case some word of commendation to the parole board. If he secures the prize he walks out among his fellowmen bowed and humbled but with the consciousness of a battle won by his own effort—his own conduct. His life is altered—his purpose is changed. There is yet for him something worth while. The law for the parole of Federal prisoners was passed by the Congress of the United States in the year 1910. During the fiscal year ending June 30, 1911, 202 Federal prisoners received the benefit of parole. Of that number, but one violated the conditions of his parole. During the year ending June 30, 1912, 191 Federal prisoners were paroled. Only two of that number violated the conditions. During the year ending June 30, 1913, 284 Federal prisoners were paroled. Thus far only three of that number have violated the conditions. (Report of Attorney General of the U. S. for years 1911, 1912, and 1913.)

The legislatures of different states have passed laws providing for parole, for the suspension of sentence in given cases, for indeterminate sentences, the duration of which is based upon conduct and a disposition to reform, for the treatment and reforming of juvenile offenders and the conserving of their moral and social natures. Laws of the above character illustrate administrative individualization. They effectively serve and conserve society and the erring individual. They are humane and beneficent.

But the task along this line has barely commenced. Penal codes and punishment should be reorganized in a way to conform to and reflect the advanced standards of today. Recognition should be frankly given to the differing and varying conditions of the criminals and the crime. The conditions in turn should be reflected in the punishment inflicted by our courts and in the administrative treatment accorded thereafter. For that class of offenders who are not truly criminals there should be imposed punishment simply deterrent in its nature. For that class whose criminality is of a superficial and not of an abiding nature, there should be afforded punishment of a corrective kind. For the class who are revealed to be tainted with an inherent and fixed criminality, incorrigibles, there should be provided a protective punishment. The danger from this class lies not in the past, but in the future of the criminal.

In a volume, "Law, Its Origin, Growth and Function," which is a course of lectures prepared by Mr. James Coolidge Carter, LL. D., of the New York bar, for delivery before the law school of Harvard University, I find the following:

> It may be asked why all social offenses should not be punished by some legal penalty. The answer is that legal penalties should be inflicted only where it is necessary. The punishments of the criminal law fall with very unequal weight upon the different victims. Little notice can be taken of the relative ignorance, guilty intention, temptation and provocation; whereas, the discipline of the moral forces is tempered by regard for these circumstances and is likely to be more effective.

However, these lectures were not delivered by Mr. Carter because of his death, and later they were given to the public by his executors.

I agree with Mr. Carter that legal penalties should be inflicted only where necessary. I agree with him that the punishments of the criminal law fall with very unequal weight upon the different victims, but I believe this manifestly unjust condition may be measurably remedied; that it is possible to work out a system of individualization of punishment through which notice may be taken and weight given to relative ignorance, guilty intention, temptation and provocation. It cannot be that subjective conditions such as these which impress and affect the discipline of the moral forces of society are not available to the law and in our courts

of justice. To admit these conditions are not there effectively available to assist in modifying and determining punishment is to admit that penal science does not keep abreast with the moral forces of society. There should be reflected in the law and in the workings of our courts of justice the last and highest adjustment of these forces to the needs of society for its protection and to the needs of the individual for his punishment, disciplining and possible restoration to civic usefulness.

In this age when all is moving forward toward a higher degree of proficiency and effectiveness, penal scientists, philosophers and law-givers may not stand still. Their task is a complex and difficult one. It has to do with society on the one hand and with the infinitely varied and complex personality of wrong-doers on the other. But this should not cause paralysis of the functions. They should go forward even at the risk of falling into incidental and temporary error. If errors were to be committed they would fall on the side of consideration and mercy for the individual and there would be a morrow for their correction. In the execution of our penal laws the kind and degree of punishment and its infliction are confided to human agencies. Nothing more need be said to carry home the conviction that it is an imperfectly accomplished task. In the courts of the United States this duty is confided to the judges. In the courts of the several states various systems obtain. In the courts of Texas in the more serious offenses the determination under the law of the degree and kind of punishment is confided to the jury. As between the judge and the jury, which is the better qualified and fitted for this duty of individualizing punishment? The jury is drawn by lot from the body of the citizenship and the requisite essentials for service under the law are few. These essentials do not go to the fitness of the jurors for the performance of any particular service. The chief purpose of the jury in criminal cases is to afford a safeguard of personal liberty to the individual. Past history abundantly reveals the necessity for this. The jury may also be considered to give concrete expression to the popular, as distinguished from the professional, will and conscience. When the jury has heard the evidence and being advised as to the law, makes its pronouncement, public opinion is satisfied to acquiesce in either condemnation or acquittal, and there is no shaking of the foundation stones of society. The determination of the character and extent of punishment to be inflicted upon the individual for the commission of crime calls for preparedness and experience that cannot be possessed by the jury. The result reached by them is likely to be emotional and impulsive. At least it is not based upon that psychological analysis and a review of the past history of the individual so essential to reach the approximate justice of the case. In my opinion the judge is the better qualified by education and experience to perform this function. He is responsible to his conscience and to a critical public judgment in the exercise of this solemn public trust. Judges, however, are finite and their capacity for this work is limited and circumscribed. We are conscious that whatever the preparation or qualities of the judge, there may only be an approximation of just results, and even that approximation may not be had uniformly and in all cases. The judge may not sound with an intellectual plummet the shallows or the depths of the nature of the individual standing before him. He may not have revealed to him from truthful lips the complete history of the individual's past. He may have revealed to him in part, but not in their entirety, the swirls and eddies of passion that were present to cause self-control or forbearance to give way to the perpetration of the unlawful deed. He may not unerringly discern the presence of a dominant vicious tendency impelling to a life of crime. But these very conditions and limitations emphasize the great necessity for doing all that human agencies may do to render more unerring, more logical, and more just a system in the devising and execution of which there will still inhere the imperfections of its finite authors.

In conclusion, permit me to say I have a profound conviction that it is today the humanitarian call of society that true regard be had under and within the law for the individual offender against the law. Christianity has brought out strongly the worth of the single soul. The door of repentence is never closed against it. This doctrine may not be appropriated by the world system. We know that individuals must be sacrificed that secular society may be kept comparatively pure. But society should always be fashioning and testing methods by which the individual offender against the law may by his treatment under and within the law be reformed, and, if possible, restored to civic usefulness.

"The Jacques Lafaience Book"

Jacques Lafaience was to have been one of the speakers at the banquet of the American Bar Association of Cincinnati. Death in the family prevented his attendance, and, by a strange coincidence, just about the time he was to have delivered the speech, the last summons came to him also. This pseudonym means little to most readers of the JOURNAL; but it represented a very vivid personality and a very unique form of literary product to everybody in New Orleans, and to thousands of dwellers in near-by Gulf States. Jacques Lafaience was James J. McLoughlin, a well known member of the Bar of New Orleans, and the author of a series of letters in humorous Creole-English patois, running over many years, and becoming eventually an institution in the Crescent City's life. The statement is not in the least exaggerated. George W. Cable, Lafcadio Hearn and others have made thousands realize the charm of the picturesque Creole life. Mr. McLoughlin saw the humor that might be extracted from it and he made romantic New Orleans see it, too. He created a character that appealed to the man on the street, one whose witty comments on men, movements and things were always something of an event when they appeared in the local press, and who became about as real to the people of that city as the Jackson monument. And when, as on the occasion of the meeting of the Executive Committee of the American Bar Association in New Orleans in 1921, Mr. McLoughlin impersonated his own creation at banquets or other festive occasions, his performance was a source of genuine delight. Since the death of her husband, Mrs. McLoughlin has been urged to publish and thus preserve in permanent form these contributions to the joy of life, and she has decided to do so. The JOURNAL is not informed when the book will be issued, but a hearty reception is assured from those who have come under the fascination of Jacques Lafaience's dialect and wit; and others who are interested in the products of this peculiarly interesting part of our country, or in the literary diversion of a brother lawyer, may wish to possess the volume.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and in Neighboring Fields and to Brief Mention of the Interesting and Significant Contributions Appearing in Current Legal Periodicals

I. Among Recent Books

Men and Books Famous in the Law. By Frederick C. Hicks, Associate Professor of Legal Bibliography and Law Librarian, Columbia University Law School. Rochester, N. Y.: The Lawyers Co-operative Publishing Co.—A series of very interesting, informing and scholarly discussions of the life and great books of Cowell, Lord Coke, Blackstone, Kent, Edward Livingston, and Henry Wheaton. Reviewers of this book have *una voce* expressed the hope that this will be but the first of a series of like books by the author.

Famous Advocates and Their Speeches. By Edward W. Kelly. London: Sweet & Maxwell, Ltd. American agents—The Carswell Company, Ltd., Toronto, Can.—Besides an historical introduction, this book contains biographical sketches of twenty-four eminent English lawyers from Lord Erskine to Lord Russell of Killowen with selections from their speeches.

A Concise Legal History. By Edward Hammond, of Lincoln College. London: Sweet & Maxwell, Ltd.—A book intended to be sufficiently comprehensive to cover in a single volume what is necessary for the purposes of the various (English) legal examinations. It contains not only the history of the whole of the important branches of substantive law, but also the history of the courts and procedure.

The Essentials of American Constitutional Law. By Francis Newton Thorpe, of the Pennsylvania Bar; Professor of Political Science and Constitutional Law, University of Pittsburgh. New York: G. P. Putnam's Sons.—This is a concise treatment of the subject of constitutional law, confining itself to less than 300 pages. It is designed as a text for college classes of non-professional students and as a concise statement of the law to be used by law students in connection with a case book on constitutional law.

Essays on Constitutional Law and Equity and other subjects. By Henry Schofield, Late Professor of Law in Northwestern University. Boston: The Chipman Law Publishing Company.—The profession gains by the fact that a brother's affection and generosity have made available in such splendid mechanical form the writings of a great scholar and teacher. Professor Schofield was the author of a great many essays on various branches of constitutional law, as well as on a number of subjects of private law, which discussions were scattered through the law journals. As he approached no subject without making a substantial contribution to it, it is fortunate that a collection of his writings has been made.

Federal Income Tax Laws Correlated and Annotated. By Walter E. Barton, Attorney at Law and Federal Tax Consultant, and Carroll W. Browning, Senior Cost Accountant, U. S. Navy Department. Washington, D. C.: John Byrne & Company.—This book more than justifies itself on the bare score of mechanical convenience, for there are printed in six parallel columns the Federal Income Tax Laws of 1909-13-16-17-18-21. The book contains all the Federal Income Tax Laws beginning in 1861. Annotations add somewhat to the book's usefulness, but its wholly sufficient claim for general use is its mechanical utility.

Blue Sky Laws. By Robert R. Reed and Lester H. Washburn, of the New York Bar. New York: Clark, Boardman Company, Ltd.—Recent agitation for the regulation of the issue of corporate securities of various kinds makes timely the mention of this convenient volume published some months ago. It contains a complete compilation of the Blue Sky legislation in the United States with some analysis of that legislation. By issuing supplemental sheets which can be lodged in a pocket provided in the binding, the publishers plan to keep the book down to date.

Handbook of the Law of Persons and Domestic Relations. By Walter C. Tiffany, Third Edition by Roger W. Cooley. St. Paul, Minn.: West Publishing Company.—This book is so widely known as a standard text book on the subject that it is sufficient merely to announce the appearance of a new edition.

Handbook of the Law of Trusts. By George Gleason Bogert, Professor of Law, Cornell University College of Law. St. Paul, Minn.: West Publishing Company.—This book adequately fulfills its purpose to give "Practitioners and students a compact statement of the fundamental principles of American law relating to Trusteeship." This book is one of a very few forming a new type of text book, being a careful and scholarly discussion of the subject confined within convenient limits of size. It is interesting to compare this book from this standpoint with books such as Clark on Equity.

Marketable Titles to Real Estate. Third Edition by Chapman W. Maupin. New York: Baker, Voorhis & Company.—This is the first revision of this well known work since 1907. More than twelve hundred new decisions on the law of vendor and purchaser have been cited or referred to. As a source from which to gather all the decisions in this important branch of the law, the new edition has an added claim to the favor of the profession.

Principles and Sources of Title to Real Property. By Anson Getman, Deputy Attorney-General of the State of New York, in charge of the Title Bureau. Albany, N. Y.: Matthew Bender & Company, Inc.—Besides a general treatment of the subject of title to real property in New York, this book contains an extensive discussion of "The Law and Practice governing the acquisition of Title from any by the State and the procedure relative to securing compensation from the State." Special consideration has been given to lands under navigable waters, unoccupied lands, canal lands, waters, tax titles, searching and examination of titles, and procedure in the Court of Claims."

Corpus Juris, Volume 26. New York: The American Law Book Company.—The appearance of this new

volume of Corpus Juris adds to our literature on the subject of fire insurance a discussion occupying some 600 pages. In extent of treatment, the subject of fraud comes next. More than 200 pages are devoted to it. Other subjects extensively discussed are fixtures, forcible entry and detainer, and forgery.

Penology in the United States. By Louis N. Robinson. Philadelphia, Pa.: John C. Winston Company. —The author was formerly head of the Department of Economics in Swarthmore College. He has spent three and one-half years as Chief Probation Officer of the Municipal Court, Philadelphia. This is a book of great value and wide interest as a careful attempt to prick out the line of the probable future trend of public thought on this subject. Here is a careful attempt to winnow from current notions largely made up of fads and fancies, the sound teachings of science and experience in the treatment of the criminal class.

In the field of physiological psychology three current publications are worthy of special mention and will be welcomed by those professionally or generally interested in the subject. *The Foundations of Personality,* by Abraham Myerson, M. D., is published by Little, Brown & Company, Boston. The author is visiting physician, Nervous Department, Boston City Hospital and Beth Israel Hospital, as well as Assistant Professor of Neurology in Tufts College Medical School. The approach to the subject is that of a physician and psychologist. As a comprehensive survey of the factors influencing the formation of character and of character expression in work, play, sex, and religion, this book is of great value. . . . The second book is entitled *The Glands Regulating Personality,* the author being Louis Berman, M. D., Associate Professor in Biological Chemistry, Columbia University, Physician to the Special Health Clinic, Lenox Hill Hospital. The Macmillan Company, New York. Persons unacquainted with the subject in reading this book will be startled at the amount of scientific data on the effect of the internal secretions on behavior. In drawing the outlines of what the author conceives to be a new science, the reader frequently feels that he has supplemented facts with fancies, but he is none the less impressed with the importance of the facts adduced and the ability with which they are marshaled. . . . The final book of the group is *Our Unconscious Mind and How to Use It,* by Frederick Pierce, the publisher being E. P. Dutton Company, New York. The author, who has lectured extensively on the sub-conscious states, here gathers together his material in a form and terminology open to lay readers. Intended as a general statement, the book is very useful as such.

Among recent books in that portion of the field of history into which a lawyer's general interests are likely to lead him, there are a number of titles worthy of note. Professor Thurman W. Van Metre, of Columbia University, is the author of a book entitled *Economic History of the United States,* which is published by Henry Holt & Company of New York. Especially valuable and illuminating is Part VI dealing with the effect of large scale production upon history and the problems respecting competition which that type of industrial organization has made acute. . . . A thought-provoking book is that by Maurice Williams, published by the Sotery Publishing Company of New York, whose title page sufficiently discloses its contents, that being *The Social Interpretation of History,* a Refutation of the Marxian Economic Interpretation of History. . . . The Macmillan Company of New York has just published *The Study of American History,* by Viscount Bryce, being the inaugural lecture of the Sir Geo. Watson chair of American Literature, History and Institutions. . . . From Houghton Mifflin Company, Boston, comes *Political Profiles from British Public Life,* by Herbert Sidebotham, being a series of essays on personages now prominent in English political circles. These are extremely well written and offer the possibilities of much insight into English political life, as well as some hours of wholly delightful reading. . . . Recently attention was called to a new edition of Daniel Boone and the Wilderness Road. A volume of like importance and interest to both men and boys is *McLaughlin and Old Oregon,* by Eva Emery Dye, the publisher being Doubleday, Page & Company, New York. . . . Professor Matthew Page Andrews is the author of a new text on *American History and Government* (J. P. Lippincott Company, Philadelphia). It is written along original lines. It is not an economic history of the United States, but an attempt to present a connected story of the country's growth and to create in the reader's mind an awareness of the economic, social and political forces which have been shaping that rule.

There are three current books on economic conditions of Europe and how those conditions affect this country. *America's Stake in Europe,* by Chas. Harvey Fahs, is published by the Association Press, New York. This book is the second volume of the "World Problem Discussion Series." It contains a wide range of topics, each treated in the novel fashion of a series of questions followed by material from which those questions can be answered. Discussional groups and forums will find the book very useful. . . . John Maynard Keynes supplements "The Economic Consequences of the Peace" by a new volume entitled *A Revision of the Treaty,* published by Harcourt, Brace & Company, New York. So far as this book is devoted to pointing out evidence justifying some of the prophecies made in the earlier book, it is informing and interesting. So far as the book is devoted to accounting for the earlier prophecies which did not come true, it is unimportant for unfortunately it is too late to remove the discord produced by the author's earlier extravagant statements. . . . Under the title *International Finance and its Reorganization,* by Elisha M. Friedman, of New York University (E. P. Dutton Company, New York), there is collected an enormous mass of data orderly arranged and judiciously valued. This study takes rank among the very best and is an important contribution.

There have appeared two books discussing in a more general way European conditions, both well written, generously informing, and quite readable. *Europe —Whither Bound?* by Stephen Graham (D. Appleton & Company, New York). This book is a result of the author's rapid tour from capital to capital of Europe, the purpose being to obtain an idea of conditions in Europe as a whole. . . . *After the War,* by Colonel Repington (Houghton Mifflin Company, Boston). This is a continuation of the author's famous diary, containing accounts of important political personalities throughout Europe and of interviews with them. There is included a very frank account of the Washington conference for the limitation of armaments. A liberal sprinkling of anecdotes and gossip adds greatly to the book's readability.

II. Current Law Journals

Under the title of *Emotional Disturbances as Legal Damage,* Professor Herbert F. Goodrich in the March issue of the Michigan Law Review has produced an interesting study of the extent to which the cases now allow compensation for emotional disturbances. This article's principal claim to general interest is its marshaling of the recent physiological findings with reference to the physical effects of emotional disturbances and its discussion of how far these scientific data indicate the desirability of broadening the field in which recovery for emotional disturbances may be had.

In a very valuable article by E. Irving Smith, printed in the March issue of the Harvard Law Review, there is to be found a detailed discussion of the development of the Massachusetts rule regarding the nature of the customer's interest in stocks subject to *Margin Trading* and in the hands of the stock broker. The shift in the holdings from the rule that the stock broker is merely a vendor of stock to his customer, to the view that he holds legal title in trust for the customer is carefully traced. There is begun in the same magazine another article of marked interest in the field of commercial law, it being a study by William E. McCurdy, of the Harvard Law School, of *Commercial Letters of Credit.* In scope and detail this discussion promises to be one of unusual interest.

Mr. Edward Gluck is the author of an article on *The Rate of Exchange in the Law of Damages,* which appears in the March issue of the Columbia Law Review. In the same number Professor Robert L. Hale, of the Columbia University Law School, further extends his discussion of the concept value on the rate cases under the title, *Rate Making and the Revision of the Property Concept.*

Connecticut is reported to be one of the three states placing rather rigid limits upon *the power of a beneficiary of a contract to sue.* Professor Arthur L. Corbin of the Yale Law School examines some of the Connecticut cases on this subject in the March issue of the Yale Law Journal and concludes that Connecticut's position in the minority on this question is not as pronounced as is commonly supposed. Under the title, *The Trust as an Instrument of Law Reform,* Professor Austin W. Scott of Harvard University re-examines some old material from a novel viewpoint.

In the January issue of the California Law Review there is printed a study by Professor Alvin E. Evans, of the University of Idaho Law School, on the extent to which contracts arising out of dealing with community property result in *community obligations.*

The Anti-Trust Laws and the Federal Trade Commission Act were the subject of an address by W. T. Holliday, of the Cleveland Bar, before a recent meeting of the Cleveland Bar Association. This helpful general view of the organization and functioning of *the Federal Trade Commission* is printed in the Ohio Law Bulletin and Reporter for March 6, 1922.

In the December number of the Illinois Law Review, Professor Albert Kocourek tabulates the result of an experiment which he performed at the Northwestern University Law School in *a mechanical form of examination for law students* as a substitute for the present essay type. The conclusions drawn are criticized by Professor George P. Costigan in the Michigan Law Review for March. The whole discussion lacks value because the authors, if acquainted with the extended experimentation which has taken place in this field and with the literature upon the subject, make no reference to either.

In the March number of the Virginia Law Review, Henry Upton Sims, of Birmingham, Ala., completes a discussion of *Rights Incident to Realty.*

Professor Henry W. Ballantine, of the University of Minnesota Law School, is the author of an article on *The Purchaser for Value and Estoppel,* the publication of which is begun in the February issue of the Canadian Law Times.

The March issue of the American Labor Legislation Review is largely devoted to the question of *Unemployment, Prevention and Compensation.*

The effect of the Uniform Sales Act on the pre-existing *law of Pennsylvania* is the subject of an article by Joseph P. McKeehan, which is printed in the Dickinson Law Review for March.

In the issue of the Central Law Journal for March 17th, C. J. Ramage, Esq., of Saluda, S. C., comments in an interesting fashion on the life work of the late *Mr. Justice Samuel Hugh Miller.*

Does a passenger put himself under a disability to recover damages for being ejected from a train by his *refusal to pay fare a second time* which the conductor erroneously but wrongfully demands. The cases on this subject are classified and discussed by Ralph S. Bauer in the Central Law Journal for March 3rd.

The California Civil Code of which David Dudley Field was chief author and advocate, has been in force fifty years. As the oldest attempt on a large scale to codify the common law, California's experience with this code is a matter of general interest. How it has worked is discussed by Professor Maurice E. Harrison in the March issue of the California Law Review. In the code states is a plaintiff whose complaint discloses one *theory* of his *action* precluded from recovering on another theory, although facts sufficient to support the latter appear in the complaint? For an exhaustive collection and a helpful classification and discussion of the cases on this question, reference is made to an article by Professor E. F. Albertsworth, of the University of Wyoming Law School, appearing in the March issue of the California Law Review.

The February number of the *Journal of the American Institute of Criminal Law* and Criminology contains a wealth of interesting material in its field. Excluding editorials, there are seventeen articles of varying length. There is an extended discussion of the subjects,—the public defender, parole, and probation. In an article entitled Medico-Legal Aspect of Morbid Impulses, Alfred Gordon, the Philadelphia alienist, points out to what extent the legal conceptions of criminal responsibility are not in accord with the principle of science and fail to satisfy the practical exigencies of life.

The Rt. Hon. Lord Justice O'Connor contributes an article to the January issue of the Law Quarterly Review in which he discusses the question of *apportioning blame in negligence cases.* Suppose a share of cumulative preferred stock is settled upon A for life, remainder to B. During A's life the payment of dividends is suspended, to be resumed after A's death. How shall the payment of *dividends in arrears* be apportioned between A and B? The English cases on this question are discussed by Walter Strachan in the January issue of the Law Quarterly Review.

AMERICAN BAR ASSOCIATION JOVRNAL

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THE TREATIES

The approval by the Senate of all the treaties which emanated from the Washington Conference has terminated the debate as to the wisdom of those engagements. They will now be submitted to the unerring test of experience. It is to be hoped that in actual operation they will tend to establish a habit of interposing Conference between Controversy and Conflict. If so, posterity will adjudge the Washington Conference as a triumph of common sense over prejudice.

Whatever be the final result of this notable experiment, it must not be forgotten that it has a double aspect. Nearest in the chain of cause and effect was the financial condition of the world. The victorious allied and associated nations were in but little better state than their vanquished antagonists. Industry and enterprise were prostrate under the burden of taxation. The only relief in sight was to stop the mad race for supremacy in navies and armament. This is the financial aspect of the treaties. From this point of view alone, the Conference was worth all it cost.

In its other and broader aspect the Conference was a manifestation of the desire of all right-minded men to abolish the causes of war and to promote peace between nations. On the eve of the Conference, President Harding gave utterance to this almost universal aspiration of his countrymen, in those noble words spoken at the tomb of the unknown soldier: "How can humanity justify or God forgive?"

It soon became manifest that these two aspects of the Conference were inseparably connected: that there could be no real limitation of armament without removal of the causes of war. The desire for relief from the burden of taxation, therefore, brought about an alliance between interest and altruism. Without such an alliance altruism is usually ineffective.

It would be childish to consider only the accomplishments of the Conference, and to close one's eyes to its limitations. It did not attempt to deal with the causes of war save only those most obvious to view in the "region of the Pacific." Even in that limited field it only attempted to do two things: to agree upon friendly conferences in regard to controversies which might arise between the parties, and to consult together in regard to the action of other nations, which might be deemed inimical to the interests of the high contracting parties. There was no recognition of or reference to the Permanent Court of International Justice, nor any agreement to substitute judicial processes for force in the determination of controversies which should not be found solvable by friendly conference and conciliation.

Until the nations of the world get ready to do in this respect what the individuals of all civilized nations have done, we must continue to expect and prepare for war.

LEGAL EDUCATION

Those who have been concerned in the long campaign of the American Bar Association to secure higher educational equipment on the part of applicants for admission to the bar will read with interest the amended rules of the Supreme Court of Kansas, promulgated under date of March 1, 1922. Rule 23 continues the requirement of educational attainments substantially equivalent to that acquired in a standard four-year course of an accredited high school and adds the following provision:

> Applicants for the examination of June, 1924, and January, 1925, shall show in addition the equivalent of one year's study in a general college course; and those for examination subsequent thereto, of two years' study in a general college course.

So far as we have been advised, this is the first official action towards carrying into effect the Cincinnati resolution of the American Bar Association. The date of the amended rules indicates that it must have been discussed and formulated before the meeting of delegates of state and local bar associations at Washington in the last week of February, 1922. Like the action of those delegates, it does not go the full length of the recommendations of the Root committee. Every journey, however, must have a

first step, and the taking of the first step indicates a willingness to travel.

It is significant that this first step was taken in a state which recognizes the power of the Supreme Court to make rules for the determination of the fitness of applicants for admission to the bar. This is a demonstration of the proper way to deal with this subject. Even if a legislature had the constitutional right to deal with such a subject, the flexibility of action required to meet the varying and progressive needs of the problem, the unwieldy processes of such a body would incapacitate it for effective action. The courts are always in session, are deeply concerned in the character and quality of their officers, and can be trusted to take into account the peculiar needs of their own jurisdiction. Kansas, for example, provides for the registration of those who study in the office of "a regular practicing attorney" and recognizes three years of study in such offices as an equivalent of graduation from law school. This may be a wise provision for Kansas, but it would be most disastrous in certain other jurisdictions.

The discussion of the comparative advantages of action by rule of court and by legislation does not involve the controlling consideration. It would be hard to select a question more truly judicial than that of the qualifications of those who seek recognition by the court as its officers. On this question every legislative utterance is an invasion of the judicial province. It should be resisted by the courts and the profession.

The committee appointed to promote the establishment of higher educational requirements for admission to the bar ought to shun legislative halls, and concentrate its efforts in friendly co-operation with the Supreme Courts of the several states.

COMPARATIVE LAW CONTRIBUTIONS

Since the Bureau of Comparative Law became a section of the American Bar Association the greater part of the April issue of the JOURNAL has been devoted to contributions from its editors. The material from that source in this issue covers a wide range and should prove of general interest. If these contributions reveal certain differences in the legislation of various countries, they also call attention to the similarity of the problems with which many widely divided nations are at present grappling. In the Latin-American legislation we see, for instance, the efforts of various republics to deal with the familiar problems of rent and tenancy; of the exploitation of sub-soil mineral deposits; of financing basic industries; even, in Argentina, of "maintaining a Republican form of government" in the provinces. In the reports from Europe, and Asia likewise, one sees plain evidence that the difficulties with which they are dealing are by no means alien to our own knowledge and interest.

An article on the "Development of Law and Jurisprudence in the Philippines" calls attention to a process which cannot fail to interest the American lawyer: the meeting in those far eastern islands of two systems of law, and the modification and adjustment which they are mutually undergoing. Curious and absorbing fact it is, that the common law which, in its nucleus, started westward so many centuries ago with the migration of the Angles and Saxons to England, should now, after pausing and consolidating itself on the American continent, stand on that farthest outpost of the Pacific, fronting not only a system which it left behind in Europe but that great body of fossilized custom and inherited tradition which dominates the legal thought of the Asian mainland! There are other special articles among the contributions which are also timely and well worth attention. The summary of the "Laws of Soviet Russia" gives in brief space a good general idea of the legalism of the "dictatorship of the proletariat"; and the article on the "American Consular Court System in China" sheds light on a jurisdiction as to which many lawyers naturally have rather vague notions.

REVERSING A VERDICT OF FICTION

In his article on "Plaintiff's Attorneys in Bardell vs. Pickwick," in another part of this issue, Justice Riddell of the Ontario Supreme Court joins the ranks of those who are determined to redress as far as they can the injustice of history and literature. In the former field these knight-errant adventures are familiar. Divers gentlemen with a historical bent have taken peculiar pleasure in attempting to reverse the opprobrious verdicts of history. But seldom do they take the form of rescue of the characters of fiction; this opens up a still wider field for the remedy of injustice and gives Justice Riddell's contribution an added interest. The old maxim of a remedy for every wrong is seen, in the light of his defense of Messrs. Dodson and Fogg, to have no limited application.

CONTRIBUTIONS OF THE COMPARATIVE LAW BUREAU OF THE AMERICAN BAR ASSOCIATION

(*Pages 220 to 256, inc.*)

ORGANIZATION AND WORK OF BUREAU

THE objects of the Bureau, include the translation into English of foreign laws, the preparation of bibliographies in its special field, and the consideration of foreign legislation and jurisprudence with a view to present information and materials of value to lawyers, law teachers and law students.

All members of the American Bar Association and of the Comparative Law Bureau will receive the JOURNAL issued by the American Bar Association.

All members of the Association are by that fact also members of the Bureau. Any state bar association can become a member on payment of $15 annually, and will then be entitled to send three delegates to the annual meeting of the Bureau and to receive five copies of the American Bar Association JOURNAL. Any county, city, district, or colonial bar association, law school, law library, institution of learning or department thereof, or other organized body of a kind not above described, may become a member on payment of $6 annually, and will then be entitled to send two delegates to the annual meeting of the Bureau and to receive two copies of the JOURNAL. Any person eligible to the American Bar Association, but not a member of it, can become a member of the Bureau on payment of $3 annually, and will then receive the JOURNAL.

Distinguished foreign jurists, legislators, or scholars may be elected honorary members. They pay no fees.

The authorship of the contributions of the Bureau to the JOURNAL is indicated in each case by the initials of the writer.

The next meeting of the Bureau will be held at San Francisco, Cal.

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Comparative Law Bureau Publications

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Visigothic Code, by Scott, of this Editorial Staff.
Swiss Civil Code, by Shick and Wetherill, of this Editorial Staff.
Civil Code of Argentina, by Joannini.
Civil Code of Peru, by Joannini; in preparation by this Bureau.
The Seven Parts (Las Siete Partidas), by Scott, of this Editorial Staff; in preparation by this Bureau.

Foreign Codes and Laws Translated Into English—Now Purchasable

French Civil Code, by Cachard.
French Civil Code, by Wright.
Japanese Civil Code, by Gubbins.
Japanese Civil Code, by Lonholm.
Japanese Civil Code, annotated by De Becker.
Japanese Commercial Code, by Yang Yin Hang.
Japanese Code of Commerce, by Lonholm.
Japanese Penal Code, by Lonholm.
German Civil Code, by Chung Hui Wang.
German Civil Code, by Loewy, under the direction and annotated by a joint committee of the Pennsylvania Bar Association and the University of Pennsylvania.
Penal Code of Siam, by Tokichi Masao (18 Yale Law Journal, 85).
Laws of Mexico, by Wheless, of this Editorial Staff.
Mining Law of Mexico, by Kerr, late of this Editorial Staff.
Mining Laws of Colombia, by Eder, of this Editorial Staff.
Commercial Laws of the World, Am. Ed., Boston Book Co.
German Prize Code, as in force July 1, 1915; translated by C. H. Huberich and Richard King (Baker, Voorhis & Co., N. Y.).

EDITORIAL

I. Miscellany

THE growth of interest in this country in foreign private law has been steady and substantial during the past fifteen years. Prior to that time only a couple of institutions gave any special attention to the matter. Now there are the following important and well selected working libraries embracing foreign codes, decisions, commentaries and legal journals: Elbert H. Gary Library of Law at the Northwestern University (Frederic B. Crossley, Lib.), Harvard University Law Library (Edward N. Adams, Lib.), The Bar Association of the City of New York, (F. O. Poole, Lib.), Columbia University Law Library (F. C. Hicks, Lib.), Massachusetts State Library (E. H. Redstone, Lib.), Yale University Law Library (Dr. E. M. Borchard, Lib.), Law Association of Philadelphia (Luther E. Hewitt, Lib.), The Bancroft Library, Berkeley, Cal., New York Law Institute, Brooklyn Law Library (Court House), Pan American Union, Washington, D. C. and the Library of Congress.

A copy has been received of the Report and Preliminary Project for an Italian Penal Code covering Book I as presented last year to the Minister of Justice by the Royal Commission for the Reform of the Penal Statutes, appointed September 14, 1919, and composed of authors and specialists in criminology of world-wide repute. The list is headed by Enrico Ferri, President. His associates are Garofalo, Di Nicola, Berenini, Setti, De Notaristefani, Alberici, Majetti, Lustig, Florian, De Sanctis, Ottolenghi and Ferrari. The Report has been issued in Italian-French, Italian-English and Italian-German and distributed among the interested scholars and organizations throughout the world with earnest request for criticism and suggestion. It is a profound and scientific *fin de siècle* presentation of the whole field of criminology and rational bases of penal sanctions. It is a gigantic work, performed by giants. The theme-key is: an eye to the offender rather than to the offense: *"Dirigere ed adattare le disposizioni di legge al delinquente anzichè al delitto."*

An evening "Course on Comparative Jurisprudence of the American Republics" has been inaugurated at the Columbia University, N. Y., under Isaac Alzamora, Jr., whose father was long a practicing *abogado* in Peru with later membership in the Bar of the City of New York. The Course includes sources and development of the laws of Mexico and other Latin American Republics, comparative study of their conflict with those of the United States, including substantive law and procedure, history of judicial organizations and methods of practicing law in the several countries. No attempt will be made to deal with each country or state, but representative doctrines will be selected and advance translations furnished students. The lectures will run two hours on Monday evenings from February 13, to May 22, comprising the Spring Session. Graduate students can secure credit for attendance at this Course on higher degrees. Fees, including University matriculation fee, $22.

Raphael Georges Levy, member of the French Institute, in an article entitled "La Loi de Huit Heures Jugée par les Faits" published in the "Revue des Deux Mondes" of February 1st of this year, reveals an astonishing social and industrial disturbance in the general economic condition of France as a result of the Eight Hour Law of April 23, 1919. In a well-reasoned and dispassionate array of facts the author shows wide-spread disaster to be inevitable wherever such a regulation is attempted to be really carried out.

The question of a colonial policy for the United States will not down. The political and economical developments of the Philippine Islands which required the dispatch of a special expert administrator as Governor-General, and the cry from Cuba for American intervention to save her Island from political and financial bankruptcy, evidence this. The Comparative Law Bureau, therefore, presents in this Number of its Bulletin generous contributions from American representatives in the Philippine Islands who are actively working out in that experiment station the problems of legislation and jurisprudence there. The words of Prof. H. Lawrence Noble, may be not inappropriately used in this connection:

> You know it was said about Rome that if an inquirer wished to ascertain the progress of her civilization and thought, he should seek it in her provinces, not in Rome herself, for the Eternal City was sadly in decay. So, though our own glorious country is yet in her youth, may it not be possible that some legal thoughts may develop in these far away islands of the Orient? We have serious difficulties with our Filipino wards in the guidance through governmental fields, but to find obstacles is to overcome them.
>
> A somewhat humorous incident has just occurred. The Philippine Legislature is now in session and the morning newspaper reports that one of the legislators has introduced a bill to compel all ships from and to foreign ports to carry the mails free and without any previous contract; this, because there is a law compelling inter-island boats to do so—as it was in Spanish times.
>
> A few years ago there was a bill, which actually passed the lower house, to tax all priests who wore robes of their orders upon the streets, P300 per year (that is, $150) each.
>
> The law here is, of course, a blending of the Spanish civil law and our own common law. Therein consists the interest in development of our jurisprudence. I am quite sure, however, that there is many a point on which the civil law might well indicate improvement in our own.

II. Private International Law and the Bureau

THE Comparative Law Bureau seeks constantly to arouse and encourage the comparative habit in American lawyers by pointing out such new pronouncements in the jurisprudence and legislation of other countries as have never received recognition here. Consideration in any degree gives promise of further interest to determine what is permanent and what is merely temporary or utilitarian. Next will come the natural inquiry whether the particular decision or enactment would apply to our own social, industrial and political conditions. When the Bureau was inaugurated in 1907 it was practically without rival or aid in the ambitious ends it sought to accomplish. In this country there was then only one legislative reference bureau—the *Legislative Reference Department* of Wisconsin. Abroad, the *Société de Législation Comparée* of France, instituted in 1869, and

the *Society of Comparative Legislation* of England, formed in 1895, and the experimental and feeble efforts of an association for the study of comparative jurisprudence founded in 1905 at Berlin, were the only organized sources along the same lines. The *Annual Bulletin* of this *Bureau* reached all the members of the American Bar Association, each issue increasing in number to keep pace with that growing membership. In addition a large number of foreign correspondents, libraries, universities and legal journals were supplied, so that the *Bulletin* went to the important educational centers throughout the world. These relations have continued to be maintained since the *Bulletin* became part of the JOURNAL in 1915 and the April number each year has continued as the *Bureau* publication. The passing years however have brought necessary modifications and limitations,—inevitable results of the initial movement, for the subject carries its own argument and has received constantly increasing recognition at home and abroad. Now nearly every state has a legislative reference or drafting bureau in which collections of legislative efforts throughout the world are constantly growing. Spain, Italy and South America have formed comparative legislation or jurisprudence societies, and legal journals in all civilized countries have for some time contained frequent and highly instructive articles emphasizing the comparative feature. The latest and one of the most important efforts is *L'Institut Intermédiaire International* established at *The Hague* in 1918, which publishes a quarterly *Bulletin* in English and French embracing public and private international law, notes on treaties, a considerable review of notable decisions of the courts of European countries involving private international law and a list of questions submitted by individuals involving the laws of different countries, together with the responses made. In this country efforts are being made along some of these lines and also additional ones by the *Department of Commerce* through Mr. A. J. Wolfe, Chief of the Division of Commercial Laws, Bureau of Foreign and Domestic Commerce. The data pertaining to foreign law is included in the *Commerce Reports* but there are also separate special circulars issued touching particular topics, such as "Commercial Courts and Arbitration in Greece," "Purchase of Real Property by Foreigners in Poland." Several of Mr. Wolfe's articles summarizing the scope of his work with pertinent instances have appeared in recent issues of this JOURNAL. His field as outlined is quite broad and with the organization now being perfected it will afford practical assistance within the purposes originally contemplated by the *Bureau*. This is especially so in respect of reliable lawyers abroad. The availability of governmental agencies for securing accurate knowledge of the standing of attorneys obviously is much superior to any private efforts such as the *Bureau* must depend upon.

These world-wide indications of a general and permanent interest in comparative law fully justify and recompense the Association for its encouragement of the *Bureau* during the past fifteen years. On the other hand, much of the original undertaking is now performed by other organs, leaving to the *Bureau* the less detailed but equally important function of presenting reviews of foreign legislation and jurisprudence and the bibliography of private international law. There will be adherence to the policy of ignoring *public* international law, for, however important that subject may be to the statesman, the diplomatist and the publicist, the real comparative study of law must rest primarily upon a serious quest for the basic principles of the municipal legislation and jurisprudence of other nations which have not yet been recognized in our own. The data furnished are to stimulate interest rather than to instruct. Special articles and bibliographical lists will point the way to full knowledge. We are all engaged in building the *American Law* system which we grant had its beginning in English history, tradition, jurisprudence and enactments, but we are constrained to recognize that those sources are fast fading before statutes passed to meet new requirements, judicial interpretations and restatement of doctrines consonant with our changed conditions, and demands for national and effective procedure in tribunals.

The purity of the modernized Roman Law as preserved through the form of the French Code in Louisiana, the Spanish basis of the law of California and other western states, the Alaskan Code and the special codes for our lately acquired Spanish possessions, to say nothing of the many cases in the most conservative States in which the civil law doctrines have been applied in derogation of the common law without specific mention, all attest the growing emancipation of this country from the traditional features of the English law and the inauguration of a distinct system entitled to be known merely as *American Law*. This will ultimately embrace principles common to all but be uniquely imbued with perpetual vitality by progressive adjustment. We have adopted the receptive doctrine and possess an extraordinary power of assimilation. The Supreme Court of the United States has declared that the fact that a law is new to our jurisprudence is not a constitutional ground for objecting to it, provided it be just, equitable and beneficial. (Hurcado vs. California, 110 U. S. 516).

In the growth of this new system, which seeks to draw perfection from every legislative, juridical, philosophical, ethical and political source, the science of comparative law has a special call for activity. To collect, marshal and study the laws and jurisprudence of all nations, to analyze them and distinguish, align, weigh, adjust and reconcile their fundamental, unvarying and common principles and demonstrate their applicability to American conditions is the work required. The thoroughness of its performance will determine the capacity of our system to demonstrate and apply the science of jurisprudence in its ultimate perfection.

W. W. S.

World's Oldest Law Suit

The oldest law suit in the world is being heard once more at Nancy, France, according to a special cable to the New York Times. It is between the communes of Charcilla and Meussia and concerns an ancient grant of forest land in the Jura Mountains, between these communes. In the year 1232 a royal charter was drawn up distributing the land and for years there was no contention. But in 1313 the inhabitants of Charcilla laid claim to a part of the forest held by their neighbors of Meussia. The claimants won, but the other side declined to accept the award and the litigation has continued to the present day. Recently the Court of Appeals at Besançon once more gave an award in favor of Charcilla, but on appeal the the Court of Cassation at Paris reversed the judgment and ordered a retrial at Nancy.

THE AMERICAN CONSULAR COURT SYSTEM IN CHINA

By CRAWFORD M. BISHOP, L.L.B., M.A.

Member of the Far Eastern American Bar Association
Late of the American Consular Service in China

WITH the exception of "leased territories," such as Dalny and Tsingtao, an American Consular Court exists wherever there is an American consulate or consulate-general. An exception should be noted in the case of Shanghai, where the judicial functions formerly lodged in the vice-consul specially designated have now been transferred to the U. S. Commissioner attached to the U. S. Court for China.[1] Exception should also be made of the vice-consul assigned to the Legation at Peking, who has no judicial functions.

The Act creating the U. S. Court for China provides for sessions of that Court to be held at regular intervals at Tientsin, Canton, Hankow, and at other consulates when there are cases pending which would require the presence of the Judge of the U. S. Court.[2]

The Act of 1906 does not specifically limit the class of actions as to which the consular courts shall have jurisdiction, but only as to the jurisdictional amount. Section 2 provides that consuls shall, as regards civil cases, be limited to those where the value of the property involved in the controversy does not exceed G. $500, and that their jurisdiction in criminal cases shall be limited to those where the penalty cannot exceed $100 fine or 60 days' imprisonment or both.

The Act of 1906 did not deprive the consuls of the authority to summon associates to sit with them in the trial of cases. But this practice has fallen into disuse. It was formerly exercised only in the more serious cases, and since the law limiting the consuls' civil and criminal jurisdiction was passed, there has been little occasion to exercise it.

In addition to the limitation in the amount involved in a controversy which a consul is authorized to hear, the provision giving the Judge of the U. S. Court supervisory power over the consuls in the case of estate actions practically makes it possible for the former to interfere at any stage of the proceedings.

All decisions of consular courts in both civil and criminal cases are subject to appeal to the U. S. Court for China. This does *not* mean that a trial *de novo* with additional evidence will be held in the higher court, unless exceptional circumstances would warrant.[3] Appeals may be upon questions of both law and fact. They may be taken subject to provisions of the Consular Court Regulations and the Rules of Court which govern them.

The procedure of the consular courts continues to be governed by the Regulations promulgated by the various Ministers to China, except in so far as modified by Rules of Court promulgated by the Judge of the U. S. Court. The procedure of the lower courts will conform to the procedure of the higher.

The effect of the legislation, regulations and rules of court is to make the substantive law and procedure of the consular courts and of the U. S. Court for China identical. Hence there is uniformity throughout the entire American judicial system in China.

While, as has been noted, the Act of 1906 does not specifically limit the character of the jurisdiction to be exercised by the consuls, it is extremely doubtful whether they retain jurisdiction in certain classes of cases which they formerly possessed. Thus all actions for legal separation or divorce, all libels in Admiralty, all petitions in bankruptcy, will undoubtedly be brought in the U. S. Court.

The main function of the consular officer in criminal cases since the creation of the U. S. Court has been to act as a committing magistrate. The Act specifically gives the consul the power to arrest, examine and commit accused persons to the U. S. Court, or to discharge them. Hence a preliminary hearing is usually held in the consular court, except at Shanghai, where it is held before the U. S. Commissioner; and if there is reasonable ground for the charge and the penalty involved is found to exceed the jurisdiction of the consul, the accused is bound for trial to the U. S. Court. He may be either sent to Shanghai for trial, or it may be held at the consulate at the next session of the U. S. Court at that place.

The jurisdiction of any particular consular court is also limited territorially by the limits of the particular consular district. In civil cases its jurisdiction would be limited to where defendant has been served within the consular district; in criminal cases to crimes committed within the particular consular district. Such district may include one or several provinces, and is not limited to the particular city or "treaty port" within which the consul is resident.

The consul has certain administrative duties closely related to his judicial functions, particularly in connection with the administration of estates. The Act of 1906 provides for the making of reports to the Judge of the U. S. Court regarding estates which are administered under his jurisdiction. The Consular Regulations also prescribe certain reports to be made to the Department of State and to the Treasury Department regarding estates of Americans decedent in China. But in administering such estates the consul must act judicially and the value of the estate must be within the jurisdictional limit of G. $500.[4]

A consul has certain judicial or quasi-judicial functions independently of his status as Consular Court Judge. These relate to his duties as "Assessor" in the Chinese courts in cases where an American citizen is plaintiff. This authority is conferred by treaty and consists in the right to attend the hearing to examine and cross-examine witnesses and, if he is dissatisfied with the proceedings, to protest against them in detail. This right pertains to every consular officer, but in practice has not been exercised, except at Shanghai. The authority of the "Assessors" of the Shanghai Consulate-General to sit in cases in the Chinese "Mixed Court" of the International Settlement, has not

1. Act of Congress of June 4, 1920, 41 U. S. Stats. at Large, 746.
2. June 30, 1906, 34 U. S. Stats. at Large, Ch. 3934.
3. Sexton v. U. S., 1 Extraterritor. Cases 180 (per Thayer J.); Jam W. A. v. Boulon, Id., 527 (per Lobingier, J.)
4. In re Hankow, Consul General's Report, 1 Extraterritorial Cases, 291 (per Thayer J.).

been taken away by the legislative act transferring their judicial functions to the U. S. Commissioner, since this authority is distinct from that as Consular Court Judge. Nor does the U. S. Court exercise any control or supervision over the discharge by Consuls or Vice-Consuls of their functions as "Assessors" in Chinese Courts.

The U. S. District Attorney may act as prosecuting officer in criminal cases in the consular courts, though this is not usually done except in cases of serious offenses. In petty misdemeanors, the consul usually tries the case in the same manner as a police court magistrate.

The consul is frequently called upon to arbitrate disputes of a civil nature and more contentions are settled in this manner than by formal legal proceedings in the consular court. Where the dispute is between a Chinese and an American citizen, this method is particularly desirable and is the procedure recommended in the treaty.

The consular officer also acts as a notary public, and the consulate records deeds, mortgages, wills and births. The consul has a seal and legal effect is given to all acts evidenced by documents bearing the official seal.

A consul may issue a commission to take testimony out of the jurisdiction. This is usually done where the witnesses whose testimony is desired are in the United States. He may compel the attendance of witnesses if they are American citizens. In the case of witnesses of foreign nationality, their attendance is usually requested through the foreign consular or other court.

The same requirements now exist for the right of attorneys to practice in the consular courts as for the U. S. Court, these being governed by the Rules for the Admission of Attorneys promulgated by the Judge of the latter.[5]

The consular officer may act as official witness to the marriage of an American citizen, but this does not give it any legal effect except in the District of Columbia or in territory over which the United States exercises exclusive jurisdiction.

Consular officer may register the Articles of Incorporation or Charter of an American corporation, but this does not necessarily imply that it will receive diplomatic protection, nor is it determinate of its legal status as an American corporation.

A consular officer may apply and enforce against American citizens Municipal laws and regulations governing the concession or settlement at the treaty port, but only when they have been approved by the Minister.

Formerly the consul had certain legislative power in the matter of recommending or concurring in Ministerial regulations governing consular courts, but the Act of 1906 transfers this whole authority to the Judge of the U. S. Court.[6]

II. United States Commissioner for China

By the Act[7] of June 4, 1920, it was provided that the Judge of the U. S. Court for China is authorized to appoint, as in the district courts of the United States and with similar powers and tenure of office, a United States Commissioner, who shall be an attorney regularly admitted to practice before the said U. S. Court for China and who, when appointed, shall be in addition ex officio Judge of the Consular Court for the District of Shanghai, with all the authority and jurisdiction now exercised by the vice-consul acting by virtue of the Act of Congress of March 4, 1915.[8] This authority and jurisdiction the Act transferred. It was also provided that at the discretion of the Judge of the U. S. Court, he might appoint the clerk of the court to perform the duties of commissioner without additional compensation therefor. In the event that it is not practicable or desirable so to appoint the clerk to act as commissioner, the Judge may, with the approval of the Secretary of State, appoint some qualified attorney to act as Commissioner.

The jurisdiction vested in the vice-consul by the Act of 1915 is the same as that provided by the Act of 1909,[9] which provided that the judicial authority and jurisdiction in civil and criminal cases vested in and reserved to the Consul-General of the United States at Shanghai by the Act of June 30, 1906, creating the U. S. Court for China, should thereafter be vested in and exercised by a Vice-Consul-General of the United States to be designated from time to time by the Secretary of State, and the Consul General at Shanghai should thereafter be relieved of his judicial functions.

The effect of this legislation is to withdraw from the Consulate-General at Shanghai all judicial powers formerly possessed by it and to lodge the same in the Commissioner of the U. S. Court for China, who thereby becomes the lower court, with all the authority formerly vested in the Consular Court Judge.

U. S. Commissioners whose powers are thus conferred upon the China Commissioner, were provided for by the Act of May 28, 1896, Section 19 of which provided in general that they should have the same powers formerly exercised by Commissioners of District Courts. The U. S. Commissioner is a quasi-judicial officer, but he does not exercise any part of the judicial power of the United States. Though not strictly officers of the district courts, they are subject to its supervision and control, and are removable by the Court.[10]

III. The Supervisory Authority of the Judge of the U. S. Court for China in Probate and Administration Causes

In addition to the ordinary appellate jurisdiction of the U. S. Court for China over state actions originating in the consular courts, the Judge of that court is given certain supervisory or administrative powers over the acts of consuls or vice consuls whether such acts are those done in their judicial capacity or otherwise, and whether appealed or not. Thus, by the Act of 1906 the consul may not pay any claims against the estate or make sale of any of the assets of the estate without first obtaining the writen approval of the said Judge. The latter is furthermore empowered to require reports from consuls or vice consuls in respect of all their acts and doings relating to a decedent's estate.

In Re Probate of the Will of John Pratt Roberts, the U. S. Court held that the law of the administration of estates had been extended to China under the term "common law," and that prior to the inauguration of

5. Extraterritorial Remedial Code.
6. Extraterritorial Cases, 186 and note 3.
7. 41 U. S. Stats. at Large, 746.
8. 38 U. S. Stats. at Large, Pt. 1, 3rd session, chap. 145, p. 1122.
9. U. S. Stats. 60th Congress, Sess. II, Chap. 235.
10. Judicial Code, Sec. 270.

the U. S. Court for China, the Consular Courts had jurisdiction in all cases. The present jurisdiction of the Consular Courts in probate matters is limited by the provisions of the Act of 1906, that "the consuls shall have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed $500."

The Consular Regulations containing the instructions of the Department of State for the guidance of Consular officers contain definite provisions on this subject. They provide[11] that:

> In China and other non-Christian countries, the property of decedents, both personal and real, is administered under the probate jurisdiction of the consular courts in those countries.

They also provide[12] that

> A consular officer charged with judicial functions referred to in this article, will make a semi-annual report to the Department of State in the case of each estate of deceased American citizens that has come within their probate jurisdiction.

These regulations make no reference to the particular law governing wills and the administration of estates, but they take the jurisdiction for granted. The Consular Court Regulations for China of 1864 (Title, "Bankruptcy, Partnership, Probate," etc., Art. 55) provide that

> Until promulgation of further regulations, consuls will continue to exercise their former lawful jurisdiction and authority in bankruptcy, partnership, probate of wills, administration of estates, and other matters of equity, admiralty, ecclesiastical and common law, not specially provided for in previous decrees, according to such reasonable rules not repugnant to the Constitution, treaties, and laws of the United States, as they may find necessary or convenient to adopt.

It is evident from the foregoing regulations that consular courts *had* jurisdiction and exercised it in such matters. But prior to the decision[13] that an American extraterritorial domicile may be acquired in China, it seems to have been the view that the China administration was a mere ancillary one, the principal administration being in the courts of the home state of the decedent. Thus, in a letter from Secretary Evarts to Mr. Woodward,[14] after remarking that the probate of wills had been recognized as a proper subject for the cognizance of the consular courts, derived from the Act of 1860 (Rev. Stats. 4085-4088), he adds

> The proceedings of the Consul, however, are not intended to supersede, nor is it supposed they can in any degree supersede, the requirements of the laws of the State of which the testator was a resident, or where the bulk of his property may be situated, as it is well known that it is under the latter laws the estate must be settled.

But now, under the decisions of the U. S. Court for China, an American citizen, dying within the jurisdiction, or domiciled in China, will have his estate administered in the consular court or the U. S. Court for China, according to the amount involved, and the law applied will be the law prevailing in the extraterritorial jurisdiction.

But in addition to the powers exercised by consuls under their probate jurisdiction, there were certain powers conferred on consuls in China to administer estates of deceased Americans by sections 1709, 1710 and 1711 of the Revised Statutes. These Statutes contained explicit directions, largely of an executive or administrative nature, and did not contemplate the consuls acting in a judicial capacity. Judge Thayer[15] held that powers to administer estates of deceased Americans conferred on Consuls by these statutory provisions are merged in powers subsequently conferred when said consuls were clothed with full probate jurisdiction, but that the said provisions of the Revised Statutes are still binding upon the consuls so far as requiring executive acts not in conflict with the exercise of full probate jurisdiction. Over such executive acts, the Judge of the U. S. Court would presumably exercise supervisory authority.

This very point was raised in a case[16] where the defendant, the American Consul General at Shanghai, was sued by the administrator of the estate of the decedent for the State of Maine and was charged with negligence and misconduct in office, in that he had administered the estate of the deceased, who died at Shanghai, in his judicial capacity and not in accordance with sections 1709, 1710 and 1711 of the Revised Statutes. The question was not settled as the case went off on a plea in abatement and was not tried on the merits of the main issue.

It should be noted that the language of the court in John Pratt Roberts' will was:

> Prior to the inauguration of this Court, the consular courts of the United States in China had jurisdiction of the estates of Americans decedent in China *in all cases*, and that now this Court has jurisdiction in such matters where the value of the estate involved is above $500 Gold, the Consular Courts retaining their jurisdiction over those estates which are valued at less than this amount.

The subsequent Solicitor's opinion of May 13, 1913, attempting to limit such jurisdiction to estates of those domiciled in China was ultimately withdrawn.[17]

11. Art. 23, Par. 416, "Personal effects of citizens dying without the U. S."
12. Art. 20, Par. 650.
13. In re Allen's Will, 1 Extraterritorial Cases, 92.
14. Quoted in Moore, op. cit. vol. 2, p. 626.
15. In re Hankow Consul General's Report, 1 Extraterritorial Cases, 291.
16. Cunningham v. Extraterritorial Cases, 109. A case between the same parties and involving the same question was recently decided in much the same way by the Federal Supreme Court. See Cunningham v. Rodgers, II Extraterritorial Cases, 19 Weekly Rev., 1448.
17. See 1 Extraterritorial Cases, 269n.

A Historic Dispatch

Marshal Joffre's historic order to make a stand and take the offensive had been issued on the evening of September 4. The world held its breath as the retreating troops turned to face the enemy. General Foch was in command of the Ninth Army at the very center of the battle front and exposed to most desperate attack. What must have been the feeling of Marshal Joffre when he received General Foch's famous dispatch: "Mon centre cède, ma droite recule. Situation excellente. J'attaque." [My centre yields, my right recoils. Situation excellent. I attack.] This dispatch marks a great historic event, and will be remembered with the *Veni, vidi, vici* of Julius Caesar. The genius of the student of war inspired the commander on the field of battle, and victory was snatched from defeat. From that moment, while the final result was often and long in doubt, the war was never lost for the Allies.—From Nicholas Murray Butler's address at the banquet in New York in honor of Marshal Foch.

DEVELOPMENT OF LAW AND JURISPRUDENCE IN THE PHILIPPINES

By H. Lawrence Noble
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IN A land some six thousand miles from America's nearest shores, a land saturated not only with the rains and sunshine of the tropics but with the jurisprudence of Manresa, Sanchéz Román, Pacheco and Viada, the absorption of the principles of Common Law has kept on gradually, steadily, and at times apace.

When Dewey entered Manila Bay the American forces found the Philippine Islands under Spanish law, in some cases somewhat modified and adapted for the government of the overseas possession, but more often consisting of old codes and decrees. In force were the Spanish Civil Code of 1889, the *Enjuiciamiento Civil* of 1888, the Penal Code of 1887, the *Ley de Enjuiciamiento Criminal* of 1888, the Code of Commerce of 1888, the Mortgage Law of 1889 and the Law of Waters of 1866, as well as a host of decrees and regulations of the Crown of Spain.

The criminal procedure was speedily replaced by the military command by our present code known as the General Orders No. 58 of 1900. The present marriage law was General Orders No. 68. Soon thereafter it was thought best to repeal the intricate code of civil procedure of Spain noted for its dilatoriness, and the Philippine Commission enacted the existing code of Civil Procedure in 1901, most of whose provisions were taken from the codes of California, Vermont and Ohio, as well as from those of other States.

In the twenty-three years of American occupation the greatest changes of course have been in the public law. The principal statutes which might be mentioned are the Philippine Bill (Act of Congress of July 1, 1902), the Jones Act (Act of Congress of August 29, 1916), and the Administrative Code of 1917 (Act No. 2711 of the Philippine Legislature). The Code of Commerce is mostly obsolete, or at least obsolescent as it has been superseded in many of its provisions by the Corporation Law (1906), the Chattel Mortgage Law (1906), the Insolvency Law (1909), the Negotiable Instruments Law (1911), the Warehouse Receipts Act (1912), the Public Utilities Acts (1913-1917), the Insurance Act (1914), the Act on Salvage (1916), and the Usury Law (1916), all of American antecedents. The Penal Code of Spain is still in force though there is a movement to adopt a new correctional code.

At first the Philippine Commission, and after it the Philippine Legislature, were kept busy in passing a multitude of laws necessary to conform to modern conditions and need of reform in a country revolving from monarchical to republican institutions. In recent years the Legislature has been passing fewer and fewer laws, but the end is not yet. The development of the law and jurisprudence has proceeded evenly on its way and carries great interest with it to the student of comparative law. But little of the Civil Code has been touched, due, no doubt to the instructions of President McKinley to the Philippine Commission to change the substantive law of the country as little as possible, but to modify the procedure.

Advance of the Common Law

In spite of the prejudice and opposition of judges and members of the bar trained in Spanish jurisprudence, the adoption of the principles of Anglo-American Common Law has been rapid and sure.

In an early case (1908) it was said that the doctrines derived from Anglo-American jurisprudence were not binding on the courts of the Philippine Islands, save only in so far as they were founded on sound principles applicable to local conditions and not in conflict with existing law. (United States v. Cuna, 12 Phil., 241.) But it was found later by the best of all teachers, experience, that many of the rules and principles of the Common Law had, to all intents and purposes, been imported into the Islands as a result of the enactment of new laws and the establishment of new institutions by the Congress of the United States or under its authority, and these laws could be construed and applied only by the aid of the Common Law from which they were derived and hence a recourse must be had to the doctrines of the law "under whose protesting aegis the prototypes of these institutions had their birth." (Mr. Justice Carson in Alzua v. Arnalot and Johnson, 21 Phil., 308.) The result of this development is epitomized by Mr. Justice Malcolm in the case of United States v. Abiog (37 Phil., 137):

> What we really have, if we are not too modest to claim it, is a Philippine Common Law, influenced by the English and American Common Law, the *derecho común* of Spain, and the customary law of the Islands and builded on a case law of precedents.

An analysis of two groups of recent cases—the first, those under the subjects covered by Spanish statutes, and the second, those covered by American-Philippine legislation and affected by the change in sovereignty—shows the Anglo-American case law has entered practically every one of the leading subjects in the field of law and in a large majority of such subjects has formed the sole basis for the guidance of the Supreme Court of the Philippine Islands in developing local jurisprudence. The past twenty years, therefore, have developed a Philippine Common Law or case law based almost exclusively, except where conflicting with local customs or institutions, upon Anglo-American Common Law, the Philippine Common Law supplementing and amplifying the bulk of the written laws of this jurisdiction, and in rendering its decisions in cases not covered by the letter of the written law, the court relies upon the theories and precedents of Anglo-American cases subject to the limited exception of those instances where the remnants of the Spanish written law present well-defined civil law theories and of the few cases where such precedents are inconsistent with local customs. (Mr. Justice Malcolm in the case of In re Max Shoop, 19 Official Gazette, 766.)

Thus we are struck by the fact that a survey of the later jurisprudence shows an increasing reliance upon English and American authorities. The practical situation which surrounds the Bench and Bar of the Philippine Islands shows that this tendency will, no

doubt, continue unabated. One great factor in this movement is the lack of digests of Spanish decisions, while there is a plentiful supply of both digests and reports of the United States Supreme Court and of the various State courts. Thus prolific use of American authorities in decisions of the Philippine Supreme Court are available sources for study and reference on legal theories mostly American, as well as the fact that each year adds to the preponderance of lawyers trained chiefly in Anglo-American case law. This is the actual situation and, however reluctant the conservative Spanish-trained judges may be to adopt the new principles, the jurisprudence of the future will not escape the collateral influence of American Common Law.

Mr. Justice (now Chief Justice) Araullo, himself a Filipino, bears testimony to this fact, as he said in 1918:

> In view of the silence of the Code of Procedure on the question of the joinder of several causes of action in one complaint against distinct persons without regard to the relation of the various causes of action to the respective defendants, the rules adopted by the Code of Civil Procedure of California and other States of the American Union should be taken into account.

In this article we shall further consider a few of the landmarks of the law and jurisprudence of 1921.

Land Laws

The land laws are comprised principally in the Philippine Bill (1902), the Jones Act (1916), the antique Mortgage Law (1889), the Land Registration Acts (1902-1919), and the new Public Land Act (1919). At first the general principle of American law was adopted that title to land included every right in ownership. The old Regalian Doctrine of Spain, that the Government retained rights to minerals in the grants of agricultural land was popularly considered abrogated; but in the new Land Act (Act No. 2874 of the Philippine Legislature) the rights in future grants of lands of the public domain to gold, silver, copper, iron, guano, gums, precious stones, coal, or coal oil are expressly reserved as property of the Government, thus returning to the principle of Spanish law. There is also expressly reserved from the operation of patents and grants the right to use for the purpose of power any flow of water through the land granted when the convertible power exceeds fifty horse-power. The sale and lease of agricultural public lands is reserved to citizens of the Philippine Islands or of the United States, and to corporations or associations of which at least sixty-one per cent of the capital stock belongs wholly to citizens of the Philippine Islands or of the United States. The latter provision was of course inserted to prevent absorption of titles by foreigners. By the interposition of the President of the United States when this Act was passed there was, however, inserted another provision that citizens of countries the laws of which grant to citizens of the Philippine Islands the same right to acquire public land as to their own citizens, may, while such laws are in force, but not thereafter, with the express authorization of the Legislature, purchase or lease parcels of agricultural land, not in excess of one hundred hectares. There are other laws covering the lease and ownership of coal and oil-bearing lands, the amount of holdings being limited and the ownership being kept by the Government itself. Governor General Wood is now insisting that the Government "should get out of business" and recommends that larger lease-holdings should be allowed to corporations and that the development of coal-bearing lands which so far have proved only an expense had better be left to private enterprise. In this connection may be mentioned that under the former administration there were organized a "national coal company," a "national cement company," and others for "development of oil lands," etc., the object being the conservation of natural resources to the Government and the native people.

The new Land Act includes homestead provisions, for more or less free patents of agricultural public land to pioneers. An effort has been made to encourage settlers on the vast amount of uncultivated agricultural land and special regulations are provided to help non-Christian occupants. Nevertheless the Wood-Forbes mission after thorough investigation found that many *bona fide* homesteaders were being forced off their small clearings by *caciques* or local men of influence who are much feared by the less enlightened natives. The Government is now taking more stringent measures to protect the poorer class of settlers who laid out the tracts they now or once occupied, but who have no money available to pay the Government fees or to employ counsel to protect their rights, and so are in danger of being robbed of the fruit of their toil.

A late case holds that a homestead may not apply solely to designate the house upon a tract of land which can be acquired from the Government upon complying with the provisions of the Public Land Act, but it usually imports not only the residential house occupied as a home but the land, in case exemption is sought from the execution for a judgment debt. (Young v. Olivares, 19 Official Gazette, 807.)

Another item of interest is that by an Act of the Legislature approved by the President of the United States May 16, 1917, the reservation of some lands of the public domain on the island of Sulu was made by executive order of the Governor General (March 4, 1921), the usufruct being granted to the Sultan of Sulu and his heirs.

There is a contract concerning land prevalent in the Philippines called the *pacto de retro*. This is a sale with the right to repurchase. If no period is stated in the agreement for redemption it is understood to be four years, but the term may be extended to ten years by express stipulation. As the contract may be made in any form, even oral, it is the common resource of the poor man, as he fears the intricacies of a mortgage contract. Under guide of this contract the courts have discovered many usurious agreements to which the land-owner often succumbs. Hence the courts do not favor the contract and will construe it as a loan when the contract is ambiguous or when circumstances surrounding the execution or performance are inconsistent with the theory that the contract is one of purchase and sale. (Mr. Justice Johnson in Manalo v. Gueco, 19 Official Gazette, 2193.) Also, a contract that repurchase could not be effected by the seller until ten years had elapsed was held to be illicit and that repurchase could be exercised at any time after making the contract, as the legal period could not exceed ten years. (Santos v. Heirs of Crisostomo, 19 Official Gazette, 990.)

Constitutional Law

A noted case was decided as to the right of suspension of an elective officer. The provincial governor of the Province of Rizal after numerous complaints against the president (chief official of a municipality) suspended him and laid the charges before the provincial board, claiming that he had acted pursuant to

the procedure in the Administrative Code, and that this provision in the law did not offend the due process clause in the Philippine Bill of Rights. The suspended official alleged that he had been elected by popular vote and could not be deprived of his office without an opportunity to be heard in his own defense and that his suspension was really due merely to differences in political opinion. The president also alleged that he had not received notice of intention to suspend him. Mr. Justice Malcolm, speaking for the court, said:

> No notice is required in the case of temporary suspension. In a popular government officers are mere agents of the people and not the rulers of the people, and he who accepts office has no proprietary right therein. Ordinarily a public official should not be removed or suspended without notice, charges, a trial, and an opportunity for explanation; but not permitting the judgment of the court to be unduly swayed by sympathy for the petitioner's brave fight, and recalling that the courts ordinarily have to give effect to legislative purposes, it is only fair to mention certain exceptions.

The court then considered the principle that a public office is not property within the sense of the constitutional guarantee of due process of law, but a public trust or agency. The power to suspend may be exercised without notice to the person suspended. The intimation that injustice might be done municipal officers is of no effect as the presumption is that the law has been followed and that the hearing and investigation afterward held will be impartial and not delayed. "The presumption is just as conclusive in favor of executive action, as to its justness and correctness, as it is in favor of judicial acts." (Mr. Justice Trent in the case of Severino v. The Governor General, 16 Phil., 366.) Mandamus to have the provincial governor and the provincial board temporarily restrained from proceeding with the investigation of the charges and to have an order issued to command the provincial governor to return the petitioner to his position as municipal president was therefore denied. This case was especially interesting as there was high feeling regarding the acts of the provincial officials who were accused of succumbing to a group of politicians who wish to have the municipal president removed as he had been energetic in ridding the town (on the outskirts of Manila) of undesirable resorts and doubtful characters. The former president had been removed by the Governor General for malfeasance and misfeasance and lack of initiative in preventing numerous robberies and thefts.

In a case concerning the right of an applicant to practice at the bar for the first time the Supreme Court of the Islands came out with the dictum that the Philippine Islands were "unorganized territory of the United States under the civil government established by Congress" in interpreting the law on the subject, following paragraph 1 of the New York rule of the Appellate Division of the New York Court. Said Mr. Justice Malcolm:

> The full phraseology "any state or territory of the American Union," indicates a sweeping intention to include all of the territory of the United States, whatever the political subdivisions might be, as distinguished from foreign country. Otherwise the Philippine Islands would be in an anomalous position like Edward Everett Hale's "Man Without a Country"—a land neither "another country" nor a "state," nor a "territory"—a land without status. (In re Max Shoop, 19 Official Gazette, 766.)

The Director of Posts thrice refused to distribute mailed copies of a newspaper, *"The Independent,"* on the ground that the printing of a certain message on a postal card containing copy of a telegram from one public official to another was defamatory or libelous of a public official. The court held that though the use of the mails by a private person is in the nature of a privilege and he has no absolute right to put into the mail anything he pleases, regardless of its character, yet the statute punishing the depositing in the mails matter obscene, indecent, or libelous in character must not be construed to interfere with the freedom of the press or any fundamental right of the people. The decision of the Director of Posts must be subject to revision by the courts in case he is accused of abusing his authority. The propriety of a periodical distributing copies of a confidential telegram may well be questioned; but to do so is not libelous per se. Order was issued to the respondent requiring him to receive, carry, and deliver the copies of *"The Independent"* refused.

Search Warrants

What is meant by the constitutional provision that a search warrant should "particularly describe the place to be searched and the things to be seized" was construed in a case where the search warrant was issued to seize the "opium" in a certain house. The officers seized not only a small amount of the drug, but some paraphernalia for smoking, scales, empty bottles, books of accounts and personal letters. The court speaking through Mr. Justice E. Finley Johnson said:

> The law specifically requires that a search-warrant should particularly describe the place to be searched and the things to be seized. There is no discretion regarding what articles the officers shall seize. Books of account, private documents and private papers cannot be seized under search-warrant, specially if their seizure is for the purpose of using them as evidence of an intended crime or of a crime already committed. The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself. (Uy Kheytin v. Villareal, 19 Official Gazette, 2715.)

Labor Contracts

Act No. 2098 of the Philippine Legislature provides for the enforcement of contracts for labor or personal service when advances of money or food (generally rice) are made by prospective employers, and punishes both employees and employers in respective cases for frauds committed therewith. The intention of the Legislature was evidently to prevent laborers from borrowing money and property and then absconding, but the law has often been used to protect peonage, and the question has arisen if the Act did not violate the constitutional inhibitions against imprisonment for debt in case an employee was convicted under the law, as well as preventing the right of freedom of contract. The Supreme Court holds that it is the fraudulent intent to get the money or property of another and not the mere breach of contract which is made a crime under the law. What is punished is the fraudulent practices and not the failure to pay the debt. (Mr. Justice Malcolm in U. S. v. Beltran, 19 Official Gazette, 2057.)

In this connection another case of moment was that in which an attorney-at-law was suspended for six months for the violation of his oath. The plaintiffs had made an agreement to work on the attorney's land in return for his professional services in prosecuting a case for them. They labored for some two years but had been informed that the attorney himself had been delinquent in prosecuting an appeal, as he had neither advanced the necessary fees himself for summoning witnesses nor had he advised his clients to do so. They

therefore stopped working for him, upon which event the attorney filed a criminal case against his clients for violation of Act No. 2098 mentioned above. His apparent desire, said the court, was to keep his clients working for him—a scheme of exploitation, as his acts showed that he intended to hold them to the performance of his own fraudulent contract even after the case had been dismissed, thus making them slaves. (*In re* Carmen, 19 Official Gazette, 1709.)

Habeas Corpus—Chinese Exclusion

The practice of issuing a preliminary citation to a respondent to show cause against the issuance of the writ of habeas corpus was distinguished from the peremptory writ in an opinion rendered by Mr. Justice Street, reversing a judgment of the lower court fining the Collector of Customs, who was served with notice of the writ two hours before a Chinaman had been deported as not being entitled to enter the Philippine Islands, the officer having failed to countermand his order for deportation. (Lee Yick Hon v. Collector of Customs, 19 Official Gazette, 1098.)

Municipal Corporations

In the case of Vilas v. City of Manila, 220 U. S., 345, the Supreme Court of the United States reversed the Supreme Court of the Philippine Islands. This was an action brought to recover for coal delivered to the old *Ayuntamiento de Manila* and used in the operation of its water supply system, the local court holding that there could be no recovery owing to the change of sovereignty. In its decision the United States Supreme Court declared that the present city of Manila, reincorporated by the Philippine Commission with substantially the same powers, area, and inhabitants as the old city is liable upon municipal obligations incurred prior to the cession of the Philippine Islands to the United States, for the reason that a municipal corporation is not totally dissolved as a mere consequence of military occupation and territorial cession.

LAWS OF THE SOVIET GOVERNMENT

Feverish Legislative Activity to Meet Immediate Needs Resulted in Fragmentary Laws and Leaving Many Matters to the Discretion of Executive or "People's Courts"

By ISAAC A. HOURWICH

THE Government of the Russian Socialistic Federated Soviet Republic has been recognized as the *de facto* government of Russia by Great Britain and has been invited to the proposed economic conference at Genoa. It is therefore of timely interest to examine the legal system established in Russia after the Bolshevik revolution of October 25 (Nov. 7), 1917.

Among the first steps of the new revolutionary government was a general repeal of all the laws of the Imperial period. As a result, a feverish legislative activity developed to meet the needs of the community. The new legislation was inevitably fragmentary, intended to solve the problems as they arose. A great many matters have been left to the discretion of the executive or to the practice of the newly created People's Courts. The whole is in a state of flux. The "new course" inaugurated a year ago, i. e., the reversion from communism to private property, is bound to work radical changes in the legislation of the first three years of the revolutionary regime. It is the object of this review to present in brief outline the main features of the new legal system.

The Form of Government.—The present form of government is avowedly a dictatorship,—"the revolutionary dictatorship of the proletariat" (*i. e.*, of the wage earning class.) Theoretically, it is meant merely as a transitional form, which is to continue only until establishment of a thorough-going system of Communism. It is realized, however, by the ruling party itself that this is a matter, not of years, but of generations. Practically, therefore, the system is intended for a whole period of Russian history.

The basic unit of the governmental structure is the "Soviet," which means *council*,—the town council in the rural communities, the factory council in manufacturing cities and the like. A convention of delegates from these councils elects the Soviet of the larger administrative division—the district (literally "riding") or the city. A convention of delegates from the district and city soviets elects the Soviet of the province ("gubernia," often mistranslated as "government"). And lastly the provincial soviets and those of the greater cities elect representatives to the "Pan-Russian Convention of the Soviets of Wage-Earners, Peasant, Red Army and Cossack Deputies," which is theoretically "the supreme authority" of the Republic. (Sec. 24 of the Constitution.)

The basis of representation is so framed as to assure a predominance to the cities over the rural districts. The elections are by a viva voce vote.

The Pan-Russian Convention of the Soviets meets twice a year. In reality it is not a deliberative assembly, but a convention in the American sense of the term. It is a body of 2,000 delegates; its sessions last only a few days. It hears reports and addresses and votes its approval or disapprovel of the resolutions submitted to it by the committees. It elects an Executive Committee of 200 members, with full power to act until the next convention, and adjourns.

The Pan-Russian Central Executive Committee, in which supreme authority is thus vested, in its turn elects a "praesidium," corresponding to a committee on committees, in American terminology, and the Council (Soviet) of People's Commissioners ("Commissars"), which corresponds to the British cabinet. The Pan-Russian Central Executive Committee meets once in two months for a brief session to hear the reports of the Praesidium and of the Council of People's Commissioners. In the interim the legislative and executive powers are exercised by the latter two bodies. In practice all actual work is done by the Council of the People's Commissioners, who issue "decrees" (statutes), subject to approval by the Praesidium. A departure from the accepted principles of parliamentary

bodies in other countries is the assignment of the members of the Pan-Russian Central Executive Committee to serve during recess in the departments (People's Commissariats), whose heads are theoretically subject to supervision by that quasi-parliamentary body.

The same plan is substantially followed in local government. Thus the whole system may be described as "government by committee."[1]

The form of government of Russia is officially described as a "federated republic." But the powers of the federal and the state governments are not clearly delimited in the constitution.

The "Declaration of the Rights of the Peoples of Russia," proclaimed on the 3rd (16th) of November, 1917, recognized "the right of the peoples of Russia to self-determination, including secession." The Constitution grants to every one of the many "nationalities" (races), which in the course of Russian military expansion have been incorporated in the Empire of the Czars, "the right to decide at its own Soviet Convention" whether it desires "to participate in the federal government" (Sec. 8). On the other hand, however, dictatorship means centralization of authority. The principle of home rule is accordingly subordinated to the supervisory power of the governing bodies.

The "Declaration of the Rights of the Peoples of Russia" proclaimed the "repeal of all racial and religious privileges and disabilities of every kind," and "the freedom of development of racial minorities and ethnographic groups inhabiting the territory of Russia." This principle is given expression in Sec. 22 of the Constitution, a special Department for the Affairs of Nationalities having been created to represent the interests of the non-Russian-speaking minorities and to promote social work in their native tongue.

Separation of Church and State.—By the decree of the Council of People's Commissioners of January 23 (February 4), 1918, separation of church and state was proclaimed. This principle is embodied in Sec. 13 of the Constitution. All oaths have been abolished and replaced by affirmation.

The Right to Vote.—The right to vote is granted to persons of either sex, 17 years of age or over. In special cases the franchise may be conferred by the Central Government upon persons under the age of 17.

There are no residence qualifications for voting.

The voting franchise is denied to persons employing labor for profit, or living on income from property, to merchants and commercial agents, to ministers of the church, to members of the former reigning family, and to police officials of the old regime.

All male citizens entitled to vote are subject to conscription for active service in the army.

Naturalization.—Aliens have in effect equal rights with citizens, including the right to vote.

Citizenship may be acquired by an alien wage-earner, or farmer employing no hired help, upon application to the local Soviet. The applicant must state in his petition that he has not been convicted of a common (non-political) crime, and must establish his identity by the testimony of citizens of the Republic, whereupon he is granted a certificate of naturalization. In exceptional cases an alien may be naturalized while residing in a foreign country. His petition must be addressed to the Chairman of the Pan-Russian Central Executive Committee and may be mailed directly to the latter, or filed with the nearest diplomatic representative of the Russian Republic. Upon approval of the petition by the Pan-Russian Central Executive Committee a certificate of naturalization is issued to him. A register of all naturalized persons is kept in the People's Commissariat of the Interior. Their names are published and transmitted through the People's Commissariat for Foreign Affairs to the governments of the nations whose citizenship they have renounced.

The Courts.—All former courts have been abolished. In their place "People's Courts" have been established. The jury in criminal cases has been replaced by an organization somewhat similar to the *Schoeffen* of the German courts. The court for the trial of felonies is presided over by a People's Judge with whom are associated six jurats. The court for the trial of misdemeanors consists of a judge and two jurats. Under the Code of Civil Procedure of Alexander II (1864) there were no juries in civil actions. By the new Rules of Judicial Procedure the court for the trial of civil actions consists of a judge and two jurats. The jurats have equal authority with the judge to pass upon all questions of law and fact, and the judge presides and votes at the deliberations of the jurats.

Actions for divorce are tried by a judge without a jury.

The judge and the jurats may be challenged for cause by the defendant in a criminal case and by either party to a civil action. A judge or a jurat is disqualified to sit in a case in the outcome of which he is directly or indirectly interested, or if he is personally biased in favor or against one of the parties. The challenge must be passed upon by the full court.

Under the Code of Criminal Procedure of Alexander II, there was no grand jury. The power of indictment was exercised by a Special Term of the Appellate Court. Under the new Rules of Procedure the Trial Court may act upon information by the police, or it may refer the case for examination to the People's Judge who sits as an examining magistrate, or to the local Investigating Committee consisting of three members.

The Judges are elected by the local Soviets and are subject to recall. The Investigating Committees are elected by the local Soviets or Executive Committees and are likewise subject to recall.

At the examination by the Investigating Committee the accused may be represented by counsel.

All previous laws of the Empire having been repealed, the courts are granted unlimited discretion in matters of procedure and evidence. In criminal cases the court may fix the penalty as it may deem just. All sentences are imposed and all judgments are rendered by a majority vote.

As a rule, all trials are open to the public. But the court may, in its discretion, exclude the public from the court room.

Appeals from trial courts may be taken to the Council of People's Judges of the judicial district. A decision of the court in a civil or criminal case may be appealed from only for errors of law. Still, the appellate court may reverse the decision of the trial court if it deems the same to be against the weight of evidence, "or otherwise manifestly unjust." (Sec. 89.)

The Bar.—The former organization of the bar has been abolished. Instead of it a new system has been established, consisting of an association of public prosecutors, an association of public defenders, and an association of solicitors in civil actions. The members of these associations are salaried officials, elected by the Executive Committee of the local Soviet. Counsel for the prosecution and for the defense are assigned in each criminal case by the presiding judge. In civil

1. Cf. Lauros Grant McConachie: Congressional Committees, 1898.

actions the litigants must apply for legal aid to the Council of the Association of Solicitors, which must examine the nature of the case and may refuse the application. An appeal from such refusal may be taken to the court having jurisdiction of the case. All counsel fees are payable to the court.

Marriage.—By the decree of January 2, 1918, religious marriage has been abolished as a legal institution.

Civil marriage may be contracted by a declaration of the parties, recorded at the office for the registration of acts of civil status (births, deaths, marriages, and divorces), or by an agreement executed before a notary. The law recognizes, furthermore, the validity of an "unregistered marriage," corresponding to the common law marriage under English and American law. A person living in an unregistered marriage cannot legally contract another marriage. The parties to the marriage may adopt the name of the husband or the wife, or their joint names. The citizenship of the wife is not affected by marriage. Nor is the legal residence of the wife changed by marriage. The marriage relation does not create community of property. Either party, if unable to support himself, or herself, is entitled to alimony from the other party. Legal guardianship over the children is exercised jointly by the parents.

All discrimination between legitimate and illegitimate children is abolished.

Divorce.—The only cause for divorce mentioned in the statute is mutual consent of husband and wife. In this respect the law of Soviet Russia is similar to the law of Japan and to the Jewish rabbinical law. Divorce by mutual consent may be obtained by simple registration, in like manner as marriage. In the absence of mutual consent an action for divorce must be brought in court. The judge, after hearing the case, may in his discretion grant or deny the petition. The decision of the court may be appealed from for errors of law. The final decree of divorce is issued only after the expiration of the time for appeal.

Inheritance.—The right to inheritance was abolished in principle by the decree of the Pan-Russian Central Executive Committee of April 27, 1918. All property after the death of its owner passes to the Republic. But the decedent's parents, children, brothers and sisters, if unable to support themselves, are entitled to support from the decedent's estate. If the latter consists only of a house, furniture, and the equipment of a farm or workship, not exceeding in value 10,000 roubles, the estate descends to the above enumerated relatives of the decedent.[2]

Nationalization of Land, Industry and Trade.—In the domain of economics the decree of the Pan-Russian Central Executive Committee of February 19, 1918, proclaimed the nationalization of land and farm buildings, machinery and live stock. The land is allotted for use and occupation to actual farm workers. The so-called "economic rent" (or "unearned increment") is to be paid into the public treasury (in accordance with the financial teachings of Henry George.) The grain trade, as well as the sale of agricultural machinery, is declared a government monopoly. The principles laid down in that decree were reaffirmed by the Constitution. By a subsequent decree of the Central Executive Committee of August 20, 1918, private property in city real estate was abolished. An exemption was made for urban settlements with less than 10,000 inhabitants, where the owners were permitted to retain the houses occupied by themselves.

By a decree of the Central Executive Committee of January 28 (February 10), 1918, repudiation of the public debt was proclaimed. This decree was later likewise incorporated in the Constitution.

Nationalization of foreign trade was ordered by a decree of the Council of People's Commissioners of April 22, 1918. A number of other decrees for the nationalization of industrial and commercial establishments followed in rapid succession. Nationalization of banking is incorporated in the constitution.

As a general principle the owners of nationalized establishments were denied the right to indemnification.

"The New Course."—Since the spring of 1921 the Soviet government has reversed its economic policy. The wholesale nationalization has been found impracticable and has been explained, upon highest authority, as "war communism." Henceforth public ownership and operation are to be confined to the basic industries only. A number of industrial establishments have since been leased to private capitalists. The general prohibition of private trading has been repealed. Deposits in the national bank are no longer limited in amount. The Soviet government has announced a "retreat" to private capitalism under government supervision.

I. A. H.

2. The amount is presumably in gold, the rate of exchange not being mentioned. In view of the fluctuating exchange value of the ruble, this provision would otherwise be meaningless, the value of 10,000 rubles at the present writing being about two cents.

Questioned Documents

The attitude of the courts toward the testimony of handwriting experts has changed greatly in recent years. Testimony regarding documents which can be clearly illustrated and regarding which understandable reasons can be given is not "expert testimony" in the ordinary sense of that term, but rather comes within the class of demonstration testimony, which is to be given credit if it deserves credit, but is not to be summarily dismissed because it is "merely opinion." More general use of such testimony has of course resulted, and in glancing over a pamphlet just issued by Mr. Albert S. Osborn of New York as a supplement to his well-known book on "Questioned Documents" the writer was surprised at the variety of interesting questions which have arisen in New York alone on matters of practice connected with the introduction of expert testimony, such as the establishment of standard writings, the qualifications of an expert, the manner in which his testimony may be given and illustrated, and the like. Among the oddities noted is the case of Dressen v. Hard, 127 N. Y. 235, holding that expert testimony may be called on to aid in deciphering illegible handwriting. The lawyer who has to try a case involving a questioned document will be remiss in his preparation if he does not make a search among the recent cases, extending not only to the general topic of "Evidence" but to the headings in whatever search book he is using which treat of trial practice, examination of witnesses, and the like. It may also be suggested to the practitioner that the recent cases contain much valuable dicta as to the weight which has been given by the courts to various circumstances adduced by handwriting experts as reasons for their conclusions. The pamphlet heretofore referred to gives a clue to some of these.—Law Notes, February, 1922.

LATIN-AMERICAN LEGISLATION

Federal Intervention in Provinces of Argentina—Statutes in Various Republics Concerning Petroleum Exploitation—Bolivia—New Chilean Nitrate Law—Colombia Supreme Court Renders Oil Deposit Decision—New Warehouse Act and Chattel Mortgage Law in That Republic—Cuba—Costa Rica—Peru Regulates Foreign Aircraft Over National Territory—Panama—Salvador—Constitution of Central American Republic—Santo Domingo

Argentina

FOR more than a year past there has been practically no legislation of a general character by the Argentine Congress, and the little there has been is of little or no interest for our purposes of comparative law study. So apparently derelict has the Congress been in enacting needed and long pending laws, that several months ago President Irigoyen bitterly and sarcastically criticized the Congress in the Message to it. Not having preserved this document, I do not undertake to quote from memory its very scathing animadversions on Congressional delinquencies.

Several Provinces of the Republic have been in what the Executive terms, in a Special Message on the subject, "a situation of institutional abnormality," to the extent that the Federal Government has been forced to intervene to re-establish order and a "republican form of government" in those Provinces. It may be of some interest to note the methods employed under the Argentine Constitution in such cases. These Argentine Provinces are self-governing entities to the same extent as our American States.

In the case of the Province of San Luis, the Congress enacted a Law declaring the intervention. Part of this Law was vetoed by the President, as below indicated. In the case of the Province of Jujuy, the President assumed to declare intervention by an Executive Decree without the action of Congress. A constitutional conflict has thus been precipitated. Without going into any study of this, I will simply quote the Law and the Decree, for comparative purposes. Article II of the Law was vetoed in the parts which are underscored, this being the form in which the Law was promulgated and published in the Boletín Oficial of December 14, 1921:

> The Senate and Chamber of Deputies of the Argentine Nation, reunited in Congress, etc., sanction with force of
>
> LAW:
>
> Art. 1. The Province of San Luis is declared intervened, for the purpose of constituting the Legislative and Executive powers of the same.
>
> Art. 2. *The Federal Interventor whom the Executive Power designates shall convoke the people of the Province to elections within thirty days counted from the time this Law of Intervention goes into effect; but* the term of the convocatory and all others related to the elections, as well as the conduct of the elections, shall be in accordance with the provisions of the Provincial laws in force.
>
> Art. 3. The functions which the Provincial Election Board has under the Provincial laws in force shall, for the purposes of this law, be exercised by the Electoral Junta of the Law of Elections.
>
> Art. 4. The expenses required by this Law shall be paid out of the general revenues and imputed to this Law.
>
> Art. 5. Let it be communicated to the Executive Power.

This Law was passed on September 29, 1921. On October 15 the President, in a wordy and resonant message to Congress, stated his objections to "the imposition of a term for the convocatory to elections, as contrary to all legal reasoning and ineffective in its determination," and ended by declaring:

> Therefore the Executive Power will proceed to organize the Legislative and Executive Powers of San Luis as soon as the Province shall be in condition for elections, with the assurance that he knows how to interpret rightly the desires of the national sentiment by holding honorable elections which shall be the faithful expression of the will of the citizenry.

Later, on December 7, the President issued a Decree appointing the National Interventor in the Province of San Luis.

On the same date, December 7, the President, without action of the Congress, issued the following Executive Decree in relation to the intervention in the Province of Jujuy:

> The Executive Power of the Nation, in General Session of Ministers,
>
> DECREES:
>
> Art 1. The Province of Jujuy is declared interviewed, for the purpose of studying the conflict of Powers and to resolve it in accordance with the Constitution and laws of the Province.
>
> Art. 2. Doctor Blank is appointed Interventor.
>
> Art. 3. The Ministry of the Interior will give the proper instructions to the Interventor.
>
> Art. 4. The expenses required by the execution of this Decree shall be paid out of the general revenues and imputed to this Decree.

This Decree was signed by the President and by all the Ministers of his Cabinet, eight in number. The important political and constitutional conflict thus raised still rages in Argentina and may have far-reaching consequences.

Since the above was written, some belated copies of the Boletin Oficial of Argentina have been received, containing several laws of belated publication, and these may be noticed.

Law No. 11,156, of September 15, 1921 (Boletin Dec. 12), makes amendments of Articles 1504, 1507, 1509, 1583, 1604 and 1610 (old numeration) of the Argentine Civil Code. All of these Articles relate to leases and subleases of urban real property for residence or business purposes.

Art. 1504 is amended by adding a clause making void all clauses of a lease which prohibits children in houses, apartments or rooms, when under the custody of their parents or guardians.

Art. 1507 is amended by substituting a new Article which provides: That in all such leases where the written contract does not stipulate a term of more than two years, the lessee shall be deemed to have an option to regard the term to be for the period which the law prescribes, notwithstanding any shorter term provided in the lease, and without increase of rent. These terms imposed by the law are:

For business uses, two years; for habitation, one and a half years; for furnished houses or rooms, where

the term is not fixed in the lease but in which the rent is payable by years, months, weeks or days, the terms shall be deemed to be for "the time fixed at the price." The benefit of this legal term is lost by failure to pay two consecutive installments of rent, by improper use or use different from that expressed in the contract, unauthorized sub-letting, etc.

Art. 1509 is amended by substituting an Article which provides that where the lessee is sued for possesson because of the expiration of the terms fixed by Art. 1507, and has paid the last month's rent, he shall have ninety days after notification of judgment before being dispossessed.

Art. 1583 is amended by adding clauses which make void in subleases any increase of rent of more than 20% over the amount of the original lease. For this purpose it is required that the amount of the original rental be stated in the contract of sub-lease, or if this is not in writing, the amount shall be stated in the receipts given for the sub-rent.

The other two Articles are amended in minor details so as to conform them to the foregoing changes, and need not be noted.

Law No. 11,170, of September 28, 1921 (Boletín of December 26, 1921), relates to Agricultural Leases. It is too lengthy to be fully abstracted, but the principal features are as follows:

All contracts for the letting of lands of less than 300 hectares for agricultural and cattle-raising purposes, are made subject to the provisions of this law. Where such contracts prescribe no term or the term is less than four years, the lessee has the option to regard it as made for the term of four years, upon giving six months' notice of such intention. If no such structures exist, the lessee may construct a brick dwelling of two stories and kitchen, with certain barns and outhouses, silo, water works, and plant five fruit or forest trees per hectare, up to a maximum of 500. For these improvements the landowner must reimburse the lessee at the expiration of his term, in cash up to a maximum of ten per cent of the assessed taxable value of the land leased; the value of the improvements to be determined by consent or by a commission appointed by the judge.

Clauses in the contract requiring the lessee to sell his products to the landlord or to any determined person, or to patronize any particular concern or use any special kind of machinery or implements, or to insure the crops in any particular company, are declared void. Quite liberal exemptions from execution, except for the purchase price, are made in favor of the farmer; domestic furniture, utensils and clothing, various farming implements and vehicles, fifteen horses or three yokes of oxen and their harness, two cows and their increase, three hogs, and barnyard fowls enough for family use for one year, and farm seeds sufficient for eighty hectares of land for the next crop. All such contracts are made exempt from the payment of stamp taxes and registration fees for five years.

A Decree of December 29, 1921 (Boletín of January 5, 1922) prescribes regulations of the Law No. 9,080, for the protection of archaeological, anthropological, paleontological and paleoanthropological remains and deposits in the Republic. J. W.

Bolivia

1. *Mineral Oil Law.*—On June 11, 1921, a law relating to leasing of mineral oil lands was enacted. It provides that no concession of more than 100,000 hectares shall be granted to any one person. Each concessionary is required to pay the government eleven per cent of the total production from the lands granted him, for fifty-five years. The law further provides that one well of five hundred meters depth must be dug for each 50,000 hectares, within five years after granting of the concession, and during the next three years one additional well for each 10,000 hectares.

2. *Funds From Sale of Unoccupied Lands.*—A large portion of the funds from the sale of unoccupied lands has been appropriated to be used for provincial improvements, such as the building of roads and bridges.

3. *Profits Tax.*—The Bolivian government has imposed a tax of five per cent per annum on all profits from commercial and industrial enterprises.

4. *Bolivian Commercial Federation.*—A commercial federation was organized during the past year, at La Paz. It is an association of the business men of Bolivia for the purpose of aiding commerce during the present period of world trade depression. Branches have been established in many of the cities of Bolivia. The association is to be incorporated, and it is expected that it will be a factor in stabilizing business and reestablishing normal internal and international trade.

5. *Treaty With Germany.*—On July 20, 1921, a treaty was signed at La Paz to renew friendly relations between Bolivia and Germany.

6. *Inheritance Tax.*—A decree has been issued ordering that taxes on inheritances and deeds of gift shall be payable upon the net sum of inheritances and deeds of gift. By this net sum of inheritance is meant the total value of the property comprising the capital of the testamentary after deducting of debts and expenses. W. S. P.

Brazil

The past year has produced very little new legislation in Brazil which is useful for our purposes. The only new Federal legislation which has come to hand is the following:

Decree No. 4,403, of December 22, 1921 (Diario Oficial, December 24, 1921), which regulates the leases of urban real property, in the absence of written stipulations in the lease to govern the relations, rights and obligations of the lessors and lessees.

In the absence of such stipulations, it is provided: The term of every such lease shall be for one year, which shall always be considered as renewed for another like period and on the same conditions as the previous, unless notice to the contrary is given at least three months before its expiration. Such notice must be given by written petition addressed to the competent judge, who shall cause the same to be notified to the other party within forty-eight hours. If the lessee is a public official or in the military or naval service, his term of lease shall be terminated upon his being ordered to another place, unless he wishes to continue the lease.

Neither party can give notice of termination at any time during the term, except in case of failure to pay rent for two entire months, or in case of need for making repairs necessary to preserve the premises; in the latter case the tenant dispossessed for that purpose has the preferential right to return to the premises when the repairs are made.

In case of improper suit for dispossession, the tenant has the right to inhabit the house, without paying any rent, for three times the length of the unexpired part of the term. A notice of increase of rent becomes effective only after two years from the date of the notification, unless otherwise provided in the

contract. A tenant notified to quit for the reason that the owner desires the premises for his personal use, has six months to give up possession; if he does not then himself occupy the premises, he is obliged to pay the tenant an indemnity equal to one year's rent. The President of the Republic is directed to enter into arrangements with the local authorities of the Federal District for the purpose of prohibiting that unfurnished houses, apartments or rooms be transformed into furnished, without the previous authorization of the President and of the Chief of Police of the Federal District.

Decree No. 4,456 of January 7, 1922 (D. O. January 14, 1922) creates a National Bureau (Caixa) of Exportation of Sugar to Foreign Countries. The Commission shall be composed of eight members as a body corporate, nominated by the President for eight years. When the price of crystal sugar in the market of Buenos Aires is lower than 600 réis, the Caixa shall purchase the quantity of sugar necessary to maintain that minimum price, and shall export it to foreign countries; and the Caixa shall have the duty to promote the propaganda in favor of the national sugars in foreign markets and to stimulate the export of candies, confections, chocolates, etc., of national production.

Decree No. 15,211, of December 28, 1921 (D. O. of January 13, 1922), approves the Regulations relative to the Ownership and Working of Mines. These Regulations are quite extensive and cannot be here reviewed. J. W.

Chile

1. *Association of International Law.*—A branch of the Association of International Law, which was founded in London in 1873, has been established in Chile.

2. *League of Nations.*—There has been created in the Department of Foreign Relations a special section to have charge of all questions relating to the League of Nations and other international affairs such as international law, social legislation, education, etc.

3. *Contracts for Public Works.*—The President of Chile has promulgated a new set of regulations for contracts for public works. These regulations provide that bids shall be submitted for all public work to exceed an amount of 10,000 pesos. These bids must be accompanied by plans and estimates which have been approved by the Council of Public Works, and the specifications must state the definite amount for which the work will be done. If the work is not completed in the time provided in the contract, the contractor is subject to fine. If no action has been taken on the bids within thirty days after opening, all bidders have the right to withdraw their bids, without right to indemnity. The rules further provide for the depositing with the government by the successful bidder of a sum of ten per cent of the amount of the bid, to be held until final acceptance of the work. Contracts, or any part thereof, may not be sublet to others without special governmental authorization. Contractors are generally prohibited from employing foreign labor. Foreign contractors are considered the same as Chilean citizens in the execution of the contracts.

4. *Stamp Tax on Documents.*—The National Congress has approved the draft of a law imposing a stamp tax on all legal documents, contracts, deeds, etc., which are to be executed, paid, or to take effect in Chile.

5. *Proposed Mining Law.*—A commission has been appointed to prepare a new mining law, to be presented to the Chilean congress for approval. It is very probable that provision will be made in this law for both a conciliation committee and an arbitration court. The commission is making a careful study of mining conditions, especially the living conditions among the workmen.

6. *Popular Credit Bank.*—A popular credit bank has recently been opened in Santiago, which will make loans on household articles and pay eight per cent interest on deposits. This bank has met with great success.

7. *International Review.*—The first issue of the International Review of Chile was published in April, 1921. Copies may be obtained in Spanish, English and French.

8. *National Problems.*—Among the national problems now confronting Chile are the regulation of the liquor traffic, development of the merchant marine, reform of the railway system, and promotion of financial stability.

9. *Local Government Council.*—El Consejo de Gobierno Local is now in its sixth year of operation. It has proved to be a valuable aid in promoting legislation, education and sanitation, and also in giving information to the several communities to aid in their development. One of its chief functions is to answer questions relating to municipal government, and to help draft laws and decrees which would be beneficial to these communities. The Council publishes a magazine called *"Revista de Gobierno Local."*

10. *Legal Status of Divorced Women.*—On June 7, 1921, the Supreme Court handed down a decision establishing the administrative rights of divorced women. It states that a divorced woman of legal age may sell or mortgage her real property without any judicial authorization, and that she is as free to dispose of any of her property as any other person of lawful age. The decision states that the limitations placed on married women in this regard are due to marital rights, and not to marriage, and that when a woman is legally divorced or separated she loses these marital rights and resumes, in full, her civic rights. W. S. P.

II

Decree No. 3030, of December 22, 1920, (Diario Oficial, December 24) of the Ministry of Hacienda, provides Regulations for stock companies.

Law No. 3795 of September 13, 1921. As the nitrate industry is the most important in Chile, the following material (furnished by the United States Department of Commerce) as to this new law, etc., promulgated at the request of the more important Chilean producing companies owing to the extreme depression of the industry, is given in full:

Law No. 3795 of September 13, 1921

Art. 1. The President of the Republic is authorized until December 31, 1922, to advance to the producers of nitrate, who obligate themselves to keep their oficinas in operation, up to seven and one-half paper pesos for each 46 kilos of nitrate ready for embarkation in the nitrate ports, and up to six paper pesos for an equal quantity of nitrate manufactured and stored in their respective oficinas, provided that this nitrate is not subject to previous loans. Not more than half of the loan may be granted in its equivalent in pounds sterling.

The advance shall be granted by means of drafts drawn by the producers within the country and after establishment of pledged security on behalf of the treasury

upon said nitrate, and its cancellation shall be effected within a period of six months.

In all cases the first exportation which is made shall be applied to the payment of these obligations.

When the term expires, or when for any reason the cancellation of the obligation of the debtor is required, the President of the Republic shall exercise the rights conferred upon a secured creditor by Art. 2397 of the Civil Code.

The loan may in no case exceed two-thirds of the selling price of nitrate at the seacoast.

Art. 2. The totals of the loans authorized by laws No. 3,229 of September 21, 1917, No. 3,409, of August 21, 1918, No. 3,666 of September 6, 1920, and by the present law, may in no case exceed a sum corresponding to 12,000,000 metric quintals of nitrate.

Art. 3. The credits to which the previous provisions refer shall belong to those of the second class for the purpose of their preference and the establishment of security on account of the Treasury shall be considered complete by the mere fact of the loan.

Art. 4. Only national banks having a paid capital of 10,000,000 or more paper pesos, which have discounted the drafts referred to in Art. 1, may withdraw from the Office of Fiscal Emission fiscal bills (paper money) with guarantee of said drafts, in addition to the guarantee described in paragraph 2 of Article 1.

The bills returned to the banks in cancellation of the drafts shall, as they mature, be handed by the banks to the Office of Fiscal Emission, which shall proceed to incinerate them with due legal formalities.

The banks referred to in paragraph 1 may collect on their nitrate loans up to one per cent more than what they pay the treasury (as interest on the bills issued) and may receive for these operations no commission whatsoever.

Art. 5. The Office of Fiscal Emission shall publish weekly in the *Diario Oficial* a statement of the number of bills issued according to this law, and of the number returned.

Art. 6. The provisions of laws No. 3,299 of September 21, 1917, No. 4,509 of August 21, 1918, and No. 3,666 of September 6, 1920, which are contrary to the present law, are hereby annulled.

Art. 7. This law shall be in force from the date of its publication in the *Diario Oficial*.

Principal Features of New Legislation

The principal features of the new legislation are the following:

1. The loans which may be made are advanced to seven and one-half paper pesos for each Spanish quintal of nitrate ready for shipment at the coast, and to six paper pesos per Spanish quintal for that stored in the interior. The amount of the loan, however, may not exceed two-thirds of the selling price of nitrate at the coast.

2. Half of the sum advanced may be granted in its equivalent in pounds sterling. It is presumed that this provision was inserted in order to furnish London exchange for the payment of export duties on such nitrate as may be exported, of which part payment is required in drafts on London or New York.

3. The total amount of nitrate on which credits may be given is increased from 8,000,000 to 12,000,000 metric quintals (1 quintal=220 pounds).

4. Producers may no longer withdraw treasury notes directly but must make their arrangements through Chilean banks having a paid up capital of 10,000,000 or more paper pesos, which may withdraw fiscal bills (paper money), secured by the producers' drafts and by the nitrate specifically pledged.

5. More definite regulations are prescribed for the control of the paper money returned upon the cancellation of the advances. It must be incinerated and a weekly statement must be published in the *Diario Oficial* of the number of treasury notes issued and those returned for incineration.

Regulations for Enforcement of Legislation

For some time after the passage of the law just described there was some uncertainty as to the methods to be followed in complying with its terms. Recently there has been issued the following decree No. 2324 of October 28, 1921, embodying the necessary regulations:

The producers of nitrate who desire to receive the benefits of laws No. 3,299 and 3,795 shall make written application to the Minister of Finance.

In this application they shall declare:

1. That they promise to work the oficinas which they shall name, specifying the monthly output of nitrate from each one.
2. The amount of the advances needed.
3. The stock of nitrate on hand, on the coast or at the plant, which they offer as security.
4. That the nitrate offered as security is not subject to prior loans.

Art. 2. The loan may not exceed the legal allowance of six paper pesos per Spanish quintal of nitrate at the plant, or of seven and one-half paper pesos per Spanish quintal of nitrate on the coast.

The loan may in no case be greater than two-thirds of the selling value of the nitrate at the port of embarkation and its amount shall be fixed by special decree, according to the changes in the market. No loan can be granted if the nitrate offered as security is subject to previous loans.

Art. 3. The loan shall be granted by means of drafts drawn within the country, at 6 months date, on the Director of the Treasury.

Art. 4. The drafts shall be guaranteed by nitrate in the proportion of one Spanish quintal to six paper pesos, if the nitrate is at the plant, or one Spanish quintal per seven and one-half pesos paper, if the nitrate is on the coast; or whatever quantity is fixed upon according to Article 2 of this decree.

Art. 5. The security shall be recorded in a private document which shall be signed, together with the draft, by the producer and, as representative of the Treasury, the collector of customs or the nitrate commissioner, depending upon whether the security is held at the port of embarkation or at the plant.

If the loan is effected in Santiago or Valparaiso, the representative of the Treasury shall be the Director of the Treasury, or the Superintendent of Customs, respectively.

There should be stated in writing in the document of hypothecation:

1. The date of the loan.
2. The amount.
3. Number of Spanish quintals of nitrate offered as security.
4. Quality of nitrate and its technical content.
5. Location of nitrate offered as security.
6. Date upon which insurance policy on account of the Treasury expires, amount of insurance and name of Chilean company with which insured.
7. Full name and address of the debtor.

Art. 6. Not more than half of the loan may be granted in the equivalent amount in pounds sterling, provided that it is repaid in the same currency. The President of the Republic shall authorize, in each particular case, the loans which shall be made in accordance with this article.

Art. 7. No draft will be accepted unless accompanied by the document in which is recorded the nature of the security. Said document shall remain in the possession of the Commission of Nitrate Auxiliaries. The Director of the Treasury shall accept the drafts provided that the written application, as well as the former requisites, bears the approval of the Commission of Nitrate Auxiliaries, which the present decree establishes, and he shall record in the office of the notary of the Treasury the document hypothecation according to Article 813 of the Commercial Code.

Art. 8. Only the national banks having a paid capital of 10,000,000 or more paper pesos, which have discounted the drafts referred to in Article 3 of this decree, may withdraw from the Office of Fiscal Emission fiscal

bills guaranteed by the drafts, in addition to the guarantee described in the second paragraph of Article 1, law No. 3,795 of September 13, 1921.

The bills returned to said banks in cancellation of the notes, as they mature, shall be handed by the banks to the Office of Fiscal Emission which shall proceed to incinerate them with due legal formalities.

The banks to which the present article refers may collect on nitrate loans interest not exceeding 1 per cent of that which they pay the Treasury and may receive for these operations no commission whatsoever.

Art. 9. The obligations contracted by the banks for the withdrawal of bills guaranteed by the nitrate drafts shall earn interest at a rate to be fixed by the President of the Republic in the same decree in which he fixes the amount of the loans.

Art. 10. The Office of Fiscal Emission shall publish weekly in the *Diario Oficial* a statement of the quantity of bills issued, as well as of those returned, according to law No. 3,795 of September 13, 1921.

Art. 11. The loans granted to the producers must be cancelled within six months. This period may be renewed, however, for one additional term of six months, provided that the guarantees of the obligation are maintained.

Art. 12. Nitrate pledged as security may not be exported without previous payment of the nitrate loan together with the export duties. Nitrate pledged as security may not be withdrawn from the warehouses of the oficinas without authorization from the Commission of Nitrate Auxiliaries, after a report from the fiscal delegate who shall have charge of the pledged nitrate at the plant.

Art. 13. The producers may make partial payments on the loans which they have received, and in such a case they may diminish the amount of their security in proportion to the amounts paid.

Art. 14. The customhouses of Pisagua, Iquique, Tocopilla, Antofagasta, and Taltal shall carry a special account of the amounts collected and shall telegraph to the Ministry of Finance and the Director of the Treasury information regarding each payment received as nitrate is exported. These payments shall be used exclusively for the cancellation of the respective drafts, for which purpose the Director of the Treasury shall open a special account with a bank of the first class, in which said payments shall be allowed to accumulate until they have reached the total value necessary for the cancellation of the drafts.

Art. 15. A Section of Nitrate Auxiliaries shall be established in the Ministry of Finance and shall be in charge of a secretary-accountant, with an annual salary of 10,000 pesos. This office shall keep the books and documents which the Commission of Nitrate Auxiliaries shall determine and shall open an account with each producer of loans received, of payments, and of cancellations.

Art. 16. There shall be formed a Commission of Nitrate Auxiliaries made up of the Director of the Treasury, the Director of Accounts, the Director of Internal Revenue, the sub-secretary of Finance and the head of the Nitrate Division of the Ministry of Finance. The secretary of this commission shall be the secretary-accountant of the Section of Nitrate Auxiliaries. This commission shall attend to the carrying out of the laws relative to nitrate auxiliaries and of the present decree.

It shall consider the applications of the producers and after studying them shall approve those whose documents are in accordance with legal and governmental regulations.

It may determine, when it seems fitting, what loans shall be granted by partial payments, and shall name the amount and date of each partial loan. It shall determine the form of bookkeeping to be done in the Office of Nitrate Auxiliaries, and may address the Officials charged with carrying out the laws above-mentioned and the present decree, offering any opportune suggestions as to the protection of fiscal interests.

This commission shall meet at least once a week in the Ministry of Finance, shall be presided over by the Director of the Treasury, and a quorum shall consist of three of its members.

NOTE: In a later decree, the place to be filled by the Director of the Treasury in the above commission was assigned to the Fiscal Treasurer of Santiago.

P. J. E.

Colombia

(a) Legislation, 1921

Law 4, August 31, (Diario oficial No. 17858, Sept. 5th) provides that oil companies must furnish hygienic quarters and suitable food for employees and carry out necessary sanitation works; they must provide at least one doctor for each 400 laborers and maintain hospitals and laboratories (Articles 1-3). Medical treatment and at least two months' extra pay must be given to all employees leaving service by reason of injury or illness (Article 4). Government Medical Inspectors are provided for (Articles 5, 6).

Law 20, November 2 (D. O. No. 17964, November 24). On *General Storage Warehouses.*

This law supplies defects in Colombian legislation, which previously contained no provisions in regard to warehouses or negotiability of warehouse receipts, and also improves the remedy for pledges, in case of warehoused merchandise, a judicial action no longer being required for foreclosure, but forced sale may be had at the warehouse upon notice. The law in many respects follows the Argentine law, especially in the adoption of the dual instrument, viz. the warehouse receipt proper, by endorsement of which title is transferred, and the "warrant" (in the Colombian law however called, more appropriately, *bono de prenda,* i. e. bond or instrument of pledge) endorsement of which creates a lien as security for loans.

The documents issued by the warehouse are "transferable by endorsement and serve to prove the storage of the merchandise, or the loan made on the security thereof" (Article 1). General Storage Warehouses shall be considered as credit institutions, subject to Government inspection in conformity with Law 51 of 1918, and their by-laws and regulations must be approved by the Government; none can be established with a capital less than $100,000, of which at least one-third must be paid-up (Articles 2 and 3). Two classes of documents are issuable: the warehouse receipt proper (*certificado de deposito*) and the instrument of pledge. The "receipt" represents the merchandise and is destined to serve as the instrument for alienation, transferring to the acquirer thereof the property in the merchandise. The "bond" of pledge represents the loan contract with the consequent security of the merchandise stored and confers the rights and privileges of a pignatory credit. (Article 4). The "certificates" and the "bonds" must be issued together, but in separable form, out of a stub-book, and numbered consecutively (Article 9). No receipts can be issued except the merchandise be free and clear of encumbrances and attachments: an encumbrance or attachment of which notice shall not have been given to the warehouse prior to the issuance of the receipts shall be deemed non-existent (Article 8). The certificate and bonds can be transferred by endorsement, jointly or separately. The endorsement of the bond only is equivalent to a pledge of the merchandise to the assignee, the endorsement of only the certificate confers the right of disposing of the merchandise upon the condition of paying the credit secured by the bond (Article 10). The first endorsement of the bond, to be valid, must be registered or noted on the stub-book of the warehouse and on the certificate (Article 11). Payment of the credit may be made or anticipated by the holder of the certificate by depositing the sum necessary with the warehouse (Article 13). Protest must be made for non-payment and, in such cases, the merchandise, after specified

notice, may be sold at public auction at the warehouse (Articles 13-15). A personal action against prior endorsers lies only for the deficiency or in certain special cases (Article 16). The warehouseman's lien, with right of sale without need for judicial process, is recognized (Article 18). A stamp tax of 20 centavos on certificates and 40 centavos per $100 on "bonds" is imposed (Article 24). Authority is given for Executive regulations (Article 25). Other articles cover form of receipts, insurance, subrogation, fines and penalties, redemption prior to foreclosure sale, right to remove deleterious merchandise, partial payments, lost instruments, splitting receipts, and application of Title 14 of the Commercial Code.

Law 21, November 2, (D. O. No. 17972, November 9) again freely permits the export of gold, upon payment of the export duties (Article 1). The issue of any kind of instruments of credit which by reason of amount or form may serve as currency is prohibited. Such instruments heretofore issued must be positively amortized within the terms prescribed by the contracts authorizing them and the Government may not grant any extension of time (Article 2). This last provision refers to the "cedulas" issued by the Treasury and private banks which have been circulating as money.

Law 24, November 5 (D. O. No. 17976, November 11). *Crop Lien and Chattel Mortgage Law.* (*Prenda agraria.*)

A decided improvement on the law, which previously did not permit of such security. The contract of *prenda agraria* instituted by this law as special security for loans in money, is subject to the law of pledge in general when not in opposition with the present law (Article 1). The lien can be constituted on machinery, tools and implements; on live stock, the products thereof, and moveable property destined for rural industry; "fruits" of any kind, pendent or standing, or after separation from the plant, also lumber, the products of mining and of national industry (Article 2). In the case of fixtures, consent of mortgagees is required (Article 3), and in all cases of prior pledges of the same property (Article 5). The pledge may be constituted by public or private instrument, but, as to third parties, must be registered; the Registrar issues a certificate of pledge to the creditor (Articles 6, 7, 9, 11). The crop which has been duly pledged does not pass with a sale of the realty unless the purchaser pays the loan (Article 8). The pledged property cannot be removed without the consent of the creditor or sold without paying the loan (Articles 10, 13). The certificate of pledge is transferable by endorsement, but the endorsement, as to the debtor and third parties must be registered: the debtor and the endorsers are liable *in solido* for the amount of the loan, interest and collection costs (Article 12). The lien lapses in two years, unless suit thereon is brought (Article 14). Summary execution suit can be brought *in rem* against the property or *in personam* against the debtor and endorsers; but to preserve rights against endorsers, suit must be brought within thirty days after maturity; and the only admissible defences are: falsity of the document in whole or in part; payment; and error in account (Articles 16, 18, 19). Taxes are a prior lien (Article 17). The creditor has the right of inspection and the contract may provide for periodical reports by the debtor (Article 20). The law, unfortunately, does not conform to modern commercial requirements in that it does not permit foreclosure except by resort to the courts and expressly provides that any agreements authorizing the creditors to appropriate the pledge other than by judicial sale or implying a waiver by the debtor of the legal formalities of an execution suit, in case of non-payment, are null and void (Article 21). Penal sanctions are provided in case of conversion, fraud or abandonment of the pledged property in his possession by the debtor (Article 23, 24).

Law 25, November 8, (D. O. No. 17978, November 12) authorizes, *inter alia* special tax assessments for local public improvements—an innovation in the Colombian tax system. Other articles of the law refer to sundry public improvements of interest, and to municipal taxes.

Law 26, November 8, (D. O. No. 17978, November 12) enacts sundry measures for the development of the Choco Territory. *Inter alia,* the obligation is imposed, under penalty of fine, on mining companies and other industrial enterprises to furnish their laborers with free hospital and medical service: laborers incapacitated by illness or accident cannot be dismissed until convalescent or upon payment of two months' wages and free transportation to the nearest town where there is a doctor and hospital (Articles 6, 10).

Law 37, November 19, (D. O. No. 17998, November 24) imposes compulsory life insurance of all employees receiving up to $2,400 a year annual salary or wages, by all industrial, agricultural and commercial enterprises whose pay roll exceeds $1,000 a month. The National and Departmental governments are obligated to insure with national companies, if premiums and other terms are equally favorable as those offered by foreign companies.

Law 48, December 6, (D. O. No. 18015, December 7) abolishes telegraphic censorship in time of peace; and regulates franking privileges: Article 5 provides that any telegram containing accusations, insults or attacks against the authorities or private persons or which attempts to perturb public order must bear the full signature of the sender, who must be identified at the telegraph office.

(b) Court Decisions

The Supreme Court in Resolution No. 9, August 26, 1921, (Diario Oficial No. 17886, September 21, 1921) upheld, by a vote of 5 to 4, the constitutionality of Article 4 of the Fiscal Code of 1912, and Articles 7, 12, 13 and 17 of the Oil Law No. 120 of 1919. The effect of the provisions of these articles is that oil deposits in public lands patented after October 28, 1874 (the date the Fiscal Code of 1873 went into effect) belong to the Nation, and not to the owner of the soil to whom the public lands were granted. The claim of the plaintiffs was that these provisions affected the vested rights of the owners of such former public lands to the oil deposits. The reasoning of the Court against this claim is as follows: in addition to the express reservation to the Nation by Articles 1116 and 1117 of the Fiscal Code of 1873 of mines and deposits of coal and of guano and similar fertilizers in public lands, Chapter 15, Title 10 of said Code provided (Article 939) that in every grant of public lands, the ownership of public lands is transferred to the grantee with all appurtenances and products, except saline springs, rock salt and other appurtenances and products, which are by law national property, the ownership of which has been reserved by the Union. The Fiscal Code of 1873 in various articles declared that to the Government belonged salt mines, including salt springs, mines

of precious metals discovered in public lands, emerald mines possessed and exploited by the Government prior to the issuance of the Code, coal and guano deposits and those covered by Article 1126 which reads:

> Mines of copper, of iron and other non-precious metals, of sulphur and others not expressed in this Title, discovered on public or nationally-owned lands, also belong to the Union, and the analogous provisions contained in the foregoing chapters and in the Code of Development (*Fomento*) shall be applied to the exploitation, lease, adjudication etc., thereof.

Consequently, none of the mines in question passed with a grant of public lands, but were reserved by the Nation to be exploited by lease, contract or adjudication. It does not follow that, because upon grant, former public lands become private property, the ownership of mines discovered in the subsoil also are private property.

The Court also combats the argument that by the adoption (Law 38 of 1887) of the Mining Code of Antioquia for the entire nation, asphalt, petroleum and other mines became the property of the owner of the soil; said Code (Article 1) provided that emerald, rock salt, gold, silver, platinum and copper mines belong to the Nation or State: all others, of any class whatsoever, to the owner of the land. This was not, the Court decides, an implied repeal of the former reserves established by the Fiscal Code, for the provisions are not necessarily inconsistent.

Three dissenting opinions were filed. One of them is based on the argument that there is a distinction between mines of national ownership, which can be granted away or adjudicated to private individuals e. g. those of precious metals and those which in addition to being nationally owned are also reserved by the Nation and cannot be alienated e. g. coal mines. The latter require an *express* reservation and the Fiscal Code of 1873 made no such express reservation of oil deposits. It also points out that if the thesis of the majority is correct, rock, silicates, slate, gravel, lime, sand, etc., on former public lands granted since 1873 belong not to the owner of the land, but to the Nation. The other dissenting opinions held to the views respectively that, even granting to Articles 1126 and 939 of the Fiscal Code the effect given to them by the majority, the law was changed by Article 42 of Law 292 of 1875 or by Law 102 of 1876, respectively, and by Law 38 of 1887. The decision it is noted does not close the door to further litigation on the part of the owners of lands so granted. P. J. E.

Costa Rica

Legislation, 1921

Executive Decree 45, December 14, (La Gaceta No. 278, December 15) subjects fire insurance policies to the supervision of the State Insurance Superintendent. Applicants for insurance must first obtain the approval of the Insurance Department of the amount to be insured: and continuous inspection to prevent over valuation is provided for. P. J. E.

Cuba

Cuba, because of its economic and political difficulties, during the past year has not enacted any legislation affecting its substantive law in a manner of interest to general practitioners. There is a great deal of new important legislation proposed and now under consideration, which has been suggested to correct the existing conditions, but such proposed legislation has not as yet taken a sufficiently definite shape to warrant reporting.

The Cuban Government in August, 1921, sent a Commercial Mission, headed by Mr. Sebastian Gelabert, Secretary of the Treasury, to Washington, D. C., in order to treat with the United States Government respecting tariff on Cuban products, particularly sugar, levied under the Emergency Tariff Act and the proposed Fordney Tariff Bill, both of which were considered as not only disastrous to Cuban industry but violative of the Treaty of Commercial Reciprocity between the United States and Cuba and as a radical departure in the political and economic policy of the United States towards Cuba.

Executive Decree, dated March 2, 1922 (Gaceta Oficial No. 54 of March 6, 1922) regulates contracts respecting agricultural finance, colonization and grinding of sugar cane.

Ecuador

Legislation, 1921

Decree of October 3 authorizes the Executive to contract one or more loans in dollars or pounds sterling up to the equivalent of 100 million sucres (at par, $48,000,000 approximately).

Decree of October 8 imposes a tax on imports by the River Guayas of 20 centavos on every 46 kilos of merchandise, proceeds to be assigned to dredging the river or for a loan therefor.

Decree of October 15 extends the 3 sucre export tax (Decrees of December 20, 1912 and October 13, 1915) per quintal on cocoa, until December 31, 1925, for the Cocoa Planters Association budget and debts. under Government supervision.

Decree of October 21, for the development of industries, authorizes the Executive to make contracts for the establishment of new industries, granting concessions exempting from fiscal and municipal taxes on machinery, raw or manufactured material, for a term of ten years, and from all "Additional Taxes" on capital. Similar concessions may be granted to established industries.

Petroleum Law of October 18, 1921.—Under the term hydrocarbons for the purposes of the law are comprised all mineral oils, natural gases, bitumens, asphaltums, waxes and other derivatives of petroleum (Article 1). The ownership of deposits or beds of hydrocarbons is reserved by the State, the Executive being empowered to grant leases for terms not exceeding 20 years from the date exploitation work begins, and to renew them for a further 10 years; a tax or royalty of not less than 5% or more than 12% of the gross product is payable in kind or in money at the option of the Government: the tax is increased one unit for every ten years of exploitation, not however to exceed the maximum (Article 2). In addition, a tax is payable in advance on leases in public lands ranging from 20 centavos the first year to one sucre (at par 48 centavos approximately) per hectare (Article 3). The procedure for obtaining leases is by application to the Ministry of Public Works, publication in the *Registro Oficial*, survey and contract, and registration of the contract (Articles 4, 7, 10, 11). Leases may be for areas not greater than 5,000 or less than 500 hectares (except where the available area in a zone is less); and the total area in the various cantons of one province cannot exceed 15,000 hectares (Article 8).

Leases may be granted to foreigners as well as to natives, but in case of foreign companies, a legal representative or manager with full power of attorney must be appointed (Articles 8, 9). Authorization by the Executive is required for assignment or subletting, both of which to, as well as any partnership with, a foreign government or public corporation are prohibited under penalty of forfeiture (Article 12). Government supervision for efficient operation as well as for compliance with the lease, and price-fixing for local sale and yearly reports, are provided for (Articles 13, 15, 19). Fifty per cent of the professional men and laborers must be of Ecuadorean birth (Article 16). Books of account must be kept in Spanish and in accordance with the requirements of the Commercial Code (Article 19). Renewals of leases are to be subject to the laws at the time of renewal (Article 20). In addition to other causes for forfeiture, such as violation of the law after notice to comply, the lease is subject to forfeiture for non-payment of taxes within three days after demand; failure to work within four years of the grant; or suspension of work for three months, except in case of *vis major*. The concession may also be voluntarily relinquished (Article 21). Capital invested under a lease is exempt from tax for 20 years (Article 22). Rights of way for pipe lines and other easements are provided for, either in connection with leases or independently (Articles 23, 24). Upon termination of the lease the concessionaire can remove his equipment, except in case of forfeiture when it escheats to the State (Article 25). Oil leases do not comprise other mineral products (28). The Mining Code is applicable in all matters not covered by the present law (30). The previous transitory laws of October 18, 1919, and November 25, 1920, are repealed; the Special Decree of 1920, however, to continue as to the Eastern Regions of the Republic, and special concessions being permitted in the province of Esmeraldas in favor of municipal public works contractors who supply the necessary funds for such works (Articles 31, 32, 34). Article 33 governs the rights and obligations of holders of titles granted under the Mining Code and former laws.

(NOTE: A translation of the foregoing law was published in the *West Coast Leader*, Lima, Peru, November 16, 1921.) P. J. E.

Mexico

In common with the other countries of Latin America whose legislation it falls to me to review, there has also been, during the past year, a dearth of new matter suitable for comparative study. Such matter as there is to notice consists, not of legislation by the Mexican Congress, but principally of Executive Decrees by the President of the Republic, who has been invested with the most important functions of legislation, particularly in the domain of national finance.

Decree of December 7, 1921 (Diario Oficial Dec. 10, 1921), removes some of the burdens on mining operations which have been the cause of no little complaint. This Decree amends Art. 16 of the Law of June 27, 1919, and provides: "The States cannot impose taxes on mining property or on the exploitation or production of mines, beyond a single impost which may not exceed 2 per cent of the value of the metals or ores," hence all other of the numerous contributions are prohibited.

Decree of November 29, 1921 (Diario Oficial, December 29, 1921), recites that the President, "taking into account the international obligations contracted by the Mexican Republic, and for the purpose of avoiding confusion in the public services," is pleased to decree:

"Beginning on the first day of January, 1922, the hours in the Mexican United States shall be counted from 1 to 24, beginning at midnight, mean time." Beginning on that date, the base meridian of 105 degrees West of Greenwich is adopted from Lower California to the States of Veracruz and Oaxaca, inclusive, and for the rest of the country that of 90 degrees West. The service of the new time is delegated to the Department of Agriculture and Fomento, and the signals are to be given at 12 o'c. M. as the 105th degree West longitude.

A Law of December 31, 1921, creates a very useful mechanism in the administration of justice in the Federal Courts, being the establishment of "Public Defenders" (Ley de Defensores de Oficio) for criminal cases. This "Official Defense" is entrusted to a Chief of Defenders and a corps of assistants "of such number of defenders as may be necessary, in the judgment of the Supreme Court of Justice, according to circumstances"; the Supreme Court being invested with the appointment of these officials.

It is provided that "the official defenders shall undertake the defense of criminals who have no defender of their own selection, when they so request or when the Court designates them for the purpose"; they shall also secure the evidence and take other steps necessary for the most effective defense; and under their strictest responsibility they shall conduct the defense of their clients through all the recourses permitted by law, necessary to "a complete and efficient defense," including proceedings for pardon and parole. The public defenders are prohibited from engaging in private practice, except in their own cases and in behalf of near relatives. The public defenders shall be paid a just fee to be fixed in each instance by the Court.

Decree of January 12, 1922 (D. O. Jan. 23, 1922), amends the Decree of July 6, 1917, Article 2, section N, imposing a Federal Tax on the use and development of public waters; and revokes the Decree of September 8, 1921, on the subject.

Decree of January 28, 1922 (D. O. Jan. 28, 1922), establishes detailed Regulations for the Issuance and Amortization of the Public Agrarian Debt.

Decree of March 15, 1922 (D. O. March 21, 1922), amends Arts. 51 and 52 of the Law of Mining Taxes, of June 27, 1919. These Articles relate to the exportation of certain mining products, and provide for invoices and their issuance by the proper officials.

J. W.

Panama

1. *Special Commission to Prevent Contraband.*—A special commission of three members has been appointed by the President for the purpose of preventing the entrance of contraband articles into the Republic. The expenses of the commission are being paid by certain special mercantile taxes.

2. *New Property Taxes.*—A land tax has been placed upon all cultivated rural lands, same amounting to three one-thousandths of their value.

3. *Defense Bonds.*—An issue of national defense bonds for the sum of 500,000 balboas (balboa—$1) has been authorized, and the bonds placed on the market at par. They bear interest at the rate of 8% per annum,

and will mature on March 10, 1932, unless subsequently redeemed by the Government.

4. *Import Tax on Rice and Coffee.*—The increase of import taxes on rice and coffee has been suspended, as being contrary to the Taft convention. The sugar taxes, however, are in no way affected, as they protect the sugar industry of Panama.

5. *National Bank.*—The charge over many government revenues has been given to the National Bank of Panama, whose main office is in Panama City, with branches in many of the towns in Panama. Under the contract, the bank is to hold on deposit funds from import duties, consular fees, and other government money, when deposits are made under official government order. Interest will be paid by the bank on these deposits. The bank further has agreed to see that no government money will be invested in any enterprises except those which are supported by good security; and to create a loan section and enlarge the local and foreign business. In return for its services the government agrees to pay the bank certain rates, ranging from one-half to three-fourths of one per cent, on payments made for the governmental treasury or on sums withdrawn from deposit. The bank pays $3,000 a year to the government for the services of a bank counselor, whose business it is to examine the accounts of the bank. The government is to do all its foreign banking business through the bank.

The contract is good until June 30, 1925, and may be renewed.

6. *Labor Union Incorporated.*—The "Unión Obrera Panameña Latina Americana de la Zona del Canal" has been granted incorporation by the government of Panama.

7. *Retail Sale of Liquor.*—The Treasury Department has issued a decree prohibiting the retail sale of liquors in hotels, restaurants, or establishments which do not import and sell liquor wholesale. Certain exceptions are made in the cases of wine and beer. Heavy fines are placed upon those who violate this decree.

W. S. P.

Peru

Legislation, 1921

Law 4208, January 15, (El Peruano, Semester I, No. 71, April 1) provides for the appointment by Congress of special judges for criminal proceedings arising out of revolution.

Law 4223, January 29, (El Peruano, I 32, February 11) Corporations (*sociedades*) heretofore or hereafter founded, whose principal purpose is the public welfare, shall possess juristic personality provided they own, and are by their by-laws capable of acquiring, property and are not maintained by State appropriations (Article 1). Their existence as juristic persons dates from authorization and approval of their by-laws (estatuas) by the Government: thereafter they may perform, acting through their legitimate representatives constituted pursuant to the by-laws, all civil acts appropriate to the purposes for which they have been organized (Article 2). Civil and commercial associations (*sociedades*) and private corporations or entities with juristic personality, as also public institutions or establishments, official corporations or entities with juristic personality, shall continue subject to the local regimen which respectively regulates them (Article 3).

Organic Law of Education, June 30, 1920, promulgated by the Executive Power, under authority of Law 4004 and 2690 (El Peruano, I Nos. 29-41, February 5-22, 1921). See also Executive Decree, February 26, 1921 (El Peruano, I 48, March 2).

Law 4225, February 26, (El Peruano, I 54, March 9) increases the tax on alcoholic beverages. Executive Regulations thereof, March 2 (El Peruano, id.).

Law 4226, March 2, (El Peruano, March 3) suspends, as to the cities of Lima, Callao and suburbs, dispossess proceedings, until September 30 (with authority to the Executive to extend for one year more), except for non-payment of rent, subletting or use for other purposes than those authorized by the lease.

Law 4232, March 14, (El Peruano, I 68, March 29) abolishes the Departmental Juntas created by the law of fiscal decentralization of November 13, 1886; the departmental revenues and property passing to the municipalities.

Law 4234, March 14, (El Peruano, I 63, March 31) amends the Parliamentary Rules of the Legislative Houses.

Executive Decree, April 15, (El Peruano, I 85, April 18) in regard to the registration of cattle brands.

Executive Decree, May 2, (El Peruano, I 141, June 24) imposes the duty to keep in cash or invest in Peru the entire capital of domestic banks and the capital allocated to Peru of branches of foreign banks, as well as the total amount of their deposits, it being permissible to invest or hold abroad only their other assets. The decree also regulates the duties of the Fiscal Inspector of Banks.

Executive Decree, May 28, (El Peruano, I 132, June 14) on irrigation.

Executive Decree, June 11, (El Peruano, I 135, June 17) prohibits, under penalty of fine, the extraction, destruction or export of archeological objects; special license may be granted, however, by the Executive to national or foreign scientific institutions.

Executive Decree, July 1, (El Peruano, Semester II, No. 47, September 2) appoints a Commission to revise the Code of Waters.

Executive Decree, July 23, (El Peruano, II 39, August 23) appoints a Commission to draft a Code of Agriculture.

Executive Decree, September 8, (El Peruano, II 83, October 17) places the inspection of insurance companies and savings banks under the jurisdiction of the Fiscal Inspector of Banks.

Law 4359, October 10, (El Peruano, II 86, October 20) approves all acts of the Government from March 3, 1921, tending to the preservation of public order.

Legislative Resolution 4383, November 2, (El Peruano, II 122, December 2) declares that Article 12 of the Constitution did not repeal Law 2972, the term "pensions" in the law not being comprised within the meaning of "salaries and emoluments" as used in the Constitution.

Executive Decree, November 15, (El Peruano, II 148, December 28) prohibits aircraft from abroad flying at a lower altitude than 3,000 meters over any part of the national territory and over the "protective zone" extending 12,000 meters from the coasts and maritime and river banks (Article 1). Any aircraft of another nation, of public ownership, contravening the above provision, shall be suspected of espionage, may be captured by force, and its crew prosecuted (Article 2). Official permission may, however, be given in advance,

for transit or voluntary descent (Article 3). In case of forced descent, the nearest military and political authorities shall inspect and report as to the cause; the aircraft and its crew may be detained for the effects of Article 2. If the descent be found to be justified, the craft shall depart immediately after repairs or refuelling, etc., are completed (Article 4). The owner of a foreign aircraft shall be liable for all damages caused by its voluntary or forced landing, and the aircraft shall be detained until such damages have been paid for or satisfactorily guaranteed (Article 5).

P. J. E.

Salvador

1. *Commercial Travelers' Convention.*—On June 7, 1920, the National Legislative Assembly of the Republic of Salvador approved the Commercial Travelers' Convention, which was concluded between the United States and Salvador in Washington, on January 28, 1919. The convention is intended to encourage mercantile transactions between the two countries. It further removes many restrictions formerly placed on commercial travelers. Ratifications were exchanged in the city of San Salvador on January 18, 1921.

2. *Importation of American Bank Notes.*—Free importation of American bank notes is permitted by a recent Executive Decree.

3. *Registration of Trade-Marks.*—Under the new trade-mark law of Salvador, applications for registration must be published three times in the official gazette, and, if within the ninety days following there is no opposition, registration will be granted. From this it will be noted that in Salvador ownership of trademarks is based on priority of registration, rather than on priority of use as in the United States. An interesting feature of this law is that ownership of a trademark passes to the heirs and may be transferred by contract.

4. *Fire Insurance Inspection Bureau.*—A fire insurance inspection bureau has been established by a recent decree. The Bureau is given the power to inspect all fire insurance contracts and approve or disapprove same. It will have supervision over all activities relative to fire insurance, including the appraisal of property. The decree sets forth certain conditions for the issuance of fire insurance, and the fines for noncompliance with these conditions.

5. *Delegate to Council of Central American Union.*—A delegate to the Provisional Council of the Central American Union was elected to represent the Republic of Salvador, and representatives were appointed to the constituent congress of that Union, the sessions of which were held in Tegucigalpa, Honduras.

6. *Central American Republic—Constitution.*—On September 9, 1921, a political constitution was signed at Tegucigalpa by the representatives of Guatemala, Honduras, and Salvador, by which those countries are formed into an independent federation called the Republic of Central America.

The principal features of this constitution are those which deal with the boundaries of the new nation, the independence and autonomy of the three states forming the union, internal and foreign debts, public works, commercial taxation, and the validity of judicial proceedings between the courts of the different component states.

The constitution sets forth the rights and duties of citizens and nationals, and those of foreigners. The duty to vote is made obligatory to men but not to women. Suffrage is granted to married women and widows over twenty-one years of age, who can read and write, and to unmarried women, over twenty-five years of age, upon making satisfactory showing of certain educational and financial qualifications. The right of women to hold public office is limited.

The inhabitants of the Republic are guaranteed the right to life, safety, liberty, and property, and the death penalty is abolished. Liberty of thought and speech are also guaranteed. Education is made compulsory.

The new Federation is to have a republican, popular, and representative form of government. This government will consist of the legislative, executive, and judicial departments. The legislative department will be composed of a Senate, consisting of three senators and three alternates from each state, and a Chamber of Deputies, consisting of deputies and alternates, elected by popular vote, in numbers proportional to the population of each state.

The specific powers granted to each chamber and to the full Congress, and those given to the executive and judicial departments, are set forth in the constitution. Other integral parts of the instrument are the sections governing freedom of the press, civil rights, and marital law.

This Constitution became effective on October 1, 1921.

W. S. P.

Santo Domingo

Legislation 1920-21

Sanitary Code, September 10, (Gaceta oficial No. 3181, December 29, 1920).

Executive Order 589, December 31, 1920, (Gaceta official No. 3190, January 29, 1921). Law of Custom House and Ports.

Executive Order 590, January 2, 1921, (Gaceta oficial 3185, January 12) amending the Land Registry Law.

Executive Order 591, January 8, 1921, (Gaceta oficial 3185, January 12) repeals Orders 572 and 583 (Article 1) and prohibits anarchistic or immoral publications or speeches (Article 2). Violation constitutes a criminal offence against the Government.

Executive Order 591, January 8, 1921, (Gaceta oficial 3189, January 26). Highways and Automobile Law.

Executive Order 596, January 31, 1921, (Gaceta oficial 3192, February 5) amending Article 83 of the Law of Judicial Organization (of 1908), as to court interpreters.

Executive Order 608, March 7, 1921, (Gaceta oficial 3202, March 12). Law to prevent the introduction and spread of dangerous communicable animal diseases.

Executive Order 609, March 7, (Gaceta oficial 3202, March 12) in regard to Directors of Land Registry.

Executive Order 611, March 11, 1921, (Gaceta oficial 3203, March 16) sundry provisions to facilitate civil proceedings. Suspended by Executive Order 616, March 19 (Gaceta oficial 3206, March 26).

Executive Order 615, March 19, (Gaceta oficial 3206, March 26) amending the Highways Law (Executive Order 212).

Executive Order 621, April 27, (Gaceta oficial 3216, April 30) amending the Divorce Law, to pro-

vide for representation of absentee parties by special attorney.

Rules of Court.—Regulations as to procedure in the Land Courts, April 20, 1921 (Gaceta oficial 3217, May 4).

Executive Order 631, June 2, (Gaceta oficial 3226, June 4) as to the National Police Force.

Proclamations of the Military Governor, June 14 and July 6, (Gaceta oficial 3229, 3237, June 15 and July 13) in regard to the proposed Evacuation. See also Gaceta oficial No. 3261, October 5.

Executive Order 636, June 14, (Gaceta oficial 3230, June 18) amending Order 589, supra.

Executive Order 638, June 22, (Gaceta oficial 3231, June 22) as to Registry fees.

Executive Order 646, July 7, (Gaceta oficial 3236, July 9) Electoral Law.

Executive Order 649, July 9, (Gaceta oficial 3237, July 13) amending the Treasury (Hacienda) Law, Order 563.

Executive Order 650, July 12, (Gaceta oficial 3238, July 16) amending the Notarial Law in regard to qualifications, jurisdiction, fees, etc.

Executive Order 651, July 12, (Gaceta oficial 3238, July 16) amending Article 94 of the Code of Criminal Procedure.

Executive Order 653, July 18, (Gaceta oficial, 3240, July 23) amends Article 84 of the Police Law of 1911.

Executive Order 654, July 18, 1921, (Gaceta oficial, 3240, July 23) amends sundry articles of the Civil Code (Article 55, re registry of births; 77, 79, 81 in regard to formalities for burials and sundry cases of death) and prescribes certain other formalities in connection with births and deaths.

Executive Order 655, July 22, (Gaceta oficial 3241, July 27) amends Article 4 of Order No. 282, Law of Property Taxes.

Executive Order 664, August 31, (Gaceta oficial 3252, September 3) amends Articles 311 and 401 of the Penal Code and gives jurisdiction to the Alcalde-judges in cases thereunder.

Executive Order 665, September 2 (Gaceta oficial 3253, September 7). Law as to inscription and transcript of real estate documents, repealing in regard thereto parts of Law of May 20, 1885, and Articles 19, 33 and 36 of Law of June 21, 1890 (Mortgage Registry Law), and Executive Order 638.

Executive Order 671, September 19 (Gaceta oficial 3259, September 28). Chattel Mortgage and Crop Lien Law, amending Order 291.

Executive Order 675, October 5, (Gaceta oficial 3262, October 8) amending the Law of Eminent Domain, Order No. 480, in sundry minor particulars.

Executive Order 676, October 6, (Gaceta oficial 3263, October 12) authorizing fines and attendance by force on witnesses in criminal cases who fail to obey subpoenas.

Executive Order 681, October 22, (Gaceta oficial 3267, October 26) amends the Property Tax Law (Executive Order 282).

Executive Order 682, October 27, (Gaceta oficial 3268, October 29) modernizes Article 110 of the Code of Commerce as to the essential requirements of a bill of exchange; and amends also Article 618 so as to provide that counsellors at law in commercial courts do not need a special written power of attorney: others than members of the bar do.

Executive Order 683, October 27, (Gaceta oficial 3270, November 5) provides that each court of appeal shall consist of three, intsead of five, judges and amending Law of Judicial Organization and Appeals Procedure of June 2, 1908.

Executive Order 689, November 30, (Gaceta oficial 3278, December 3) amends the Water Law, Executive Order No. 318.

Executive Orders Nos. 691 and 700, December 6 and December 27, 1921, (Gaceta oficial 3280, December 10, 3287 January 4) amend the law of Land Registration.

Executive Order 699, December 22 (Gaceta oficial 3285, December 28). Insolvency Law. The law *semble* is applicable only to traders (Article 1 defination of debtor). The law covers three classes of proceedings—suspension of payments by a debtor whose assets exceed his liabilities (Chapter 1, Articles 2-20), insolvency, for honest debtors (Chapter 11, Articles 21-36) and bankruptcy (*quiebra* or *bancarrota*), (Chapter III, Articles 37-83, 93) which may be simple or fraudulent. Suspension of payments contemlpates a composition with creditors; insolvency, a discharge with or without a composition with creditors; these are voluntary proceedings: bankruptcy is an involuntary proceeding with liability to imprisonment and without the benefit of discharge. The law provides for the appointment by the Executive of one official referee (*Relator*) and one Receiver (*Depositario*) for each judicial district. P. J. E.

Book Review

"EXTRATERRITORIAL CASES," by Charles S. Lobingier, Judge of the United States Court for China—Government Bureau of Printing, Manila. Price $6.00.

Apropos of the widespread interest in Far Eastern subjects and especially in Extraterritoriality, a volume which has just come from the press and which embodies the work of our extraterritorial court in China during the first fourteen years of its existence deserves more than passing mention. The book is entitled "Extraterritorial Cases" and was compiled and edited by Judge Charles S. Lobingier who has presided over the United States Court for China during the past eight years.

The book contains a full report of the decisions of that court from its beginning, also of those reviewing the same by the Court of Appeals and the leading cases decided by other courts on questions of extraterritoriality. It is thus a complete case book on the subject and should prove especially opportune now that the whole scheme of extraterritoriality is to be examined by a commission with the view to determining whether conditions in China are such as to warrant its early abolition.

The book was printed at the government Bureau of Printing, Manila, and is a model of law reporting. The text is in large clear type with all quotations in small size and all citations in foot-notes. There is a copious and logically arranged index and a valuable table of references including all statutes chronologically arranged, which are cited in the opinions of the court. On the whole the work will be needed by any one desiring to investigate the subject of which it treats and reflects great credit upon the administration of Judge Lobingier who attended personally to all the details of publication including the laborious task of proof reading.

CRAWFORD MORRISON BISHOP.

EUROPEAN LITERATURE AND LEGISLATION

German Bibliography for 1921—Survey of Dutch Legislation During Recent Years—Recent Spanish Works on Legal Subjects—Swiss Legislation for 1921 Shows Changes in National and Cantonal Constitutions

Germany

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R. I. N.

Holland

(a) Survey of Dutch Legislation, 1918

Archives.—The law of June 17th, 1918, for the regulation of the Records Office. Journal of State 378. Regulations for the arrangement and managing of the records of the Government, the Provincial States and the Municipalities.

Taxation.—1. The law of January 11th, 1918, with regard to the levying of a tax upon dividends and bonuses. State Journal 4.

The taxation of the dividends of companies limited by shares, private limited companies on shares, co-operative and other associations and mutual insurance companies, established within the Kingdom.

II. Various laws by which existing taxations are raised.

Distribution Courts.—A law of July 26th, 1918, for the institution of a special jurisdiction in the case of distribution and other crisis matters. State Journal 494.

Appeal in distribution and other crisis questions to a special Court.

Allowances for High Cost of Living.—Various laws by which temporary or permanent increases are allowed to:

1. Officials and functionaries belonging to the High Offices of State and the Household of H. M. the Queen.

2. Officials and functionaries as well as workmen connected with the State Mint at Utrecht.

3. The widows and orphans of civil servants.

4. Officials and functionaries of the Post, Telegraph and telephone services and of the postal cheque and transfer service.

5. Officials and functionaries with the State Fisheries port at IJmuiden.

6. The staff of the Government arsenals.

7. Officials and functionaries belonging to the Departments of Finance, Home Affairs, Justice, the Admiralty, Local Government, War, Foreign Affairs and Colonies.

8. Officials and ex-officials in the Dutch East Indies.

9. The civil servants sojourning in this country on vacation in the enjoyment of vacation pay, or half-pay or pension as well as the widows and orphans of civil servants of the colony of Dutch Guyana in the enjoyment of a pension or other maintenance allowance, who may be staying in this country.

Trade Register.—The law with regard to the institution of a Trade Register of July 26th, 1918. State Journal 493.

All commercial concerns established within the Kingdom situate in Europe will be registered. The Commercial register shall be kept by the Chambers of Commerce and Factories, each for so far as has reference to its district.

Smelting Works, Steel and Rolling Mills.—The law of July 26th, 1918, containing authority for participation in the capital of a company limited by shares, having for its purpose the establishment and working of a Dutch Furnace, steel and rolling mills. State Journal 486.

By this statute the Minister for Finance is authorised, on behalf of the State to participate for an amount of fl. 7½ millions.

Law With Regard to the Termination of Tenancies.—Law to prevent evictions from dwellings of March 25th, 1918. State Journal 182.

Measures are taken in order to prevent tenants, under the present extraordinary circumstances, from being evicted from their dwellings should no valid reasons exist for this.

Should the tenant be given notice to quit he may apply to the housing commission with a request to cancel such notice.

This request must be made within a week from the time notice to quit has been given. The tenancy may from time to time be prolonged for six months.

Annual Trade Fairs.—Law for the amendment and increase of item VII, Chapter B of the Budget for 1918 (Department of Finance) containing inter alia an advance, bearing interest, to the Association for the holding of Annual Trade Fairs in Holland, June 17th, 1918. State Journal 385.

Agricultural Labourers.—Law of April 20th, 1918, for the acquisition by agricultural labourers of the property in land with a dwelling or of free ground on lease. State Journal 259.

Agricultural labourers who satisfy various requirements and are Dutch subjects are enabled to acquire property in land or on a tenancy or lease. The plot of land may not cost more than fl. 4000—, the rent may not amount to more than fl. 50.

Co-operation in the carrying out of this law by associations established exclusively with this object in view and by the Municipalities.

The State grants advances bearing interest to the Municipalities and such Associations.

The workers are allowed to pay interest and annuities in weekly instalments.

For the carrying out of the law it is possible to take over land compulsorily.

Punishment of Soldiers.—Law of April 20th, 1918, containing further provisions regarding the application of conditional convictions.

The State of War.—I. Law to enable the Government to issue a loan or loans for fl. 350,000,000—on behalf of the State. December 19th, 1018. State Journal 830.

II. Law to increase Chapter VI of the Budget (extraordinary credit, inter alia, for aviation) January 14th, 1918. State Journal 22.

III. Law of March 23rd, 1918, concerning the timely development of lignite without concession. State Journal 168.

It is desirable in the present extraordinary circumstances, in the interests of the supply of fuel for the country to open up the possibility to bring to a state of development as speedily as possible the layers of lignite present in the soil of this country.

IV. Law of June 17th, 1918, to provide in the house famine. State Journal 379.

The Government can state that in a municipality the need of housing accommodation is so serious that immediate provision is required.

The carrying out of these measures is left to the Municipal Councils.

V. Law for the amendment and increase of Chapter V of the Budget, June 17th, 1918. State Journal 380.

Fl. 15,000,000—to provide for the need of dwellings.

VI. Law of June 17th, 1918, containing further provisions in the present extraordinary circumstances, having reference to the supervision of foreigners staying here in the country. State Journal 410.

The Government and other Authorities are authorized to allot to those foreigners staying in the country who are considered as being a menace to public order, safety, health or morals, or those who do not conduct themselves according to the regulations laid down by or pursuant to a general administrative measure, a definite place of residence within the Kingdom in Europe and to have such conducted thither; it is also possible to deny such the right of residence in certain places within the Kingdom in Europe and to have them removed from there.

The liberty of foreigners staying in this country to proceed abroad is not limited by the application of the foregoing measures.

Conversion of Fallow Land.—Law of July 27th, 1918, containing regulations concerning the conversion of meadows and grazing land, fields of clover or artificial meadows to arable land. State Journal 503.

Measures for increasing the production of grain during the prevailing scarcity of food. It is compulsory to convert the plots to be indicated by the Authorities into arable land against payment of an indemnity.

Fairway.—Law of April 26th, 1918, concerning the graving of a fairway from Dordrecht to the sea. State Journal 275.

Criminal Code.—Law of June 17th, 1918, to amend Art. 206 of the Criminal Code (having reference to wilfully making oneself ineligible for military service). State Journal 397.

The Zuider Zee.—Law of June 14th, 1918, with regard to the closing up and filling in of the Zuider Zee. State Journal 354.

Closing by means of a dam running from the coast of North Holland through Amsteldiep to the island of Wieringen and from that island to the Frisian coast near Piaarm.

A commencement may be made with the work on May 1st, 1924, or earlier.

Zuider Zee Fund.—Law with regard to the instituting of a fund for the benefit of the closing off and filling in of the Zuider Zee. December 20th, 1918. State Journal 827.

C. J. T. D.

(b) Dutch Legislation, 1917, '19, '21

The legislation over 1917, 1918 and 1919 is as a whole conditioned by the war, either being caused through economical stress or being the outcome of political strife between the conservative and progressive parties. In nearly all instances the conservative parties had to meet the demands of the progressive parties who found their support in the economical discontent of the people and the general fear of the revolutionary influences from the warring countries. Socially Holland has made great progress.

1917.

Housing.—Law of March 26th, instituting a Rent Committee in every community, to which house-owners and lease-holders can appeal in case of disagreement regarding increase of rent. This committee settles the amount of the increase to be granted; final appeal is with the county judge. The committee also provides for the many cases in which lessees are threatened with

dispossession from their homes without their being able to find new quarters.

Amendments to the Constitution.—Laws of Nov. 29 (Staatsbladen 660, 661, 662) contain the amendments to the Constitution and Additional Articles of the Constitution. They promulgate: franchise to women as members of Parliament, Provincial States and Municipal Government; franchise to women as voters for these bodies; election of the second House of Parliament by the proportional method; equalization of sectarian and public school as regards governmental care and allowances; universal vote, regardless of amount of property of citizens, with certain exceptions as to criminals, idiots, etc. The number of male voters was augmented in this way by 50%.

1918.

Administration.—Decree of Sept. 25th (Sb. 551) announces the institution of two new departments, of Education and of Labor, formerly subdivisions of other departments.

1919.

Insurance.—Decree of Feb. 28 (Sb. 55) announcing the institution of Bureaus of Labor which in future may undertake the complete execution of all insurance laws, i. e., Workmen's Accident Insurance Law, enacted since 1904, Invalidity Pension Act, Voluntary Old Age Pension Act, to be enacted this year, and Infirmity Insurance Act to be enacted in the near future.

Though the promulgation of the Invalidity Pension Act dates back to 1913, it was enforced in 1919 only after having undergone manifold revisions on a progressive basis. Its main features are: all wage-earners up to 65, earning less than 2,000 guilders taxable income, are obliged to insure themselves and to see that their employers pay weekly premiums additional to the wages. The amount of the pension to be paid depends on the premiums thus paid according to fixed rates. (Maximum amount possible about Fl. 6.25 per week.) Pension is paid: either to the insured party when reaching the age of 65, or at earlier age in case he or she becomes an invalid; or in case of death of the insured to his children under 14 and to his widow in case she is over 60 years or an invalid. All wage earners being 65 years of age at the time the law was enforced get a free pension of three guilders per week. Its queer mixture of state pension and obligatory pension prevents the law from being popular.

The Voluntary Old Age Pension Act of Nov. 4 (Sb. 628) provides for the same category of citizens, with the omission of the restriction "wage-earner," and guarantees, against premiums paid by the insured, a pension at the age of 70 plus $100 funeral expenses.

Labor law of Nov. 1 (Sb. 624). No children under 14 years of age are allowed to work. Women must have a rest of 8 weeks in the confinement period and during the nursing period an appropriate place in which to nurse the child. Time of labor is limited to 45 hours a week and 8 hours a day. Labor in stores, hotels and pharmacies, etc., is subject to special regulations. A special chapter is devoted to labor in bakeries; all night and Sunday work is prohibited.

Unemployment.—Law of Oct. 31 (Sb. 620) extends a Decree of 1916 to the effect that the funds for unemployment of all recognized labor organizations are doubled through a special allowance of the Government and municipalities. The labor organizations have the full administration of the allowances under supervision of the government.

Decree of March 26th (Sb. 127) announcing the joining of the Covenant of the League of Nations.

Sanitation.—Law of Nov. 27th (Sb. 784) instituting a permanent body for the study of foreign and domestic health conditions and new methods of improvement. Sub-committees and inspectors see that new regulations are introduced over the whole country.

Education.—Laws of March 1st (Sb. 105 and 106) simplify the requirements of high school diplomas and university degrees, doing away with many useless traditions.

Law of Elementary Instruction of Oct. 9 (Sb. 778) promotes among other things the obligatory institution of a two-years' continuation school in every municipality where there is a sufficient demand from the side of the pupils.

Anti-Revolution law of July 28th (Sb. 619). This law contains a detailed description of all acts that in the future will be considered as conspiring with revolutionary parties in foreign countries, punishable with imprisonment for a maximum of five years. This law is inspired through the general fear of bolshevism.

1921.

Law of Jan. 15th (Sb. 14) contains a new simplified Code of Penal Proceedings.

Law of July 5th (Sb. 834) institutes the Children's Court with a single judge presiding. The requirements for this position are made the same as for the ordinary courts, so that no women can be appointed as yet.

(c) Dutch Legal Literature

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D. Josephus Jitta, De wederopbouw v. h. internat. recht op grondslag van een rechtsgemeenschap van het menschelyk geslacht, 1919, Tj. Willink, Harlem.

M. Kosters & Bellemans, Les conventions de la Haye de 1902 et 1905 sur le droit international privé, 1921 M. Nyhoff, the Hague. M. J. S.

Spain

Bibliography

Jimenes de Asúa (Luis), *Profesor de la Universidad Central: Derecho Penal.*

This work which, in some respects, takes a different and original view of the application and enforcement of the criminal law from those previously entertained, is a highly important contribution to legal literature.

The question of the responsibility of minors when guilty of illegal acts has always given rise to much controversy among jurists, and the evident impossibility of establishing a rule applicable to every case has, in most countries, caused the determination of mental capacity to distinguish between right and wrong to be governed by circumstances, after a proper examination of the alleged culprit; hence, age is not taken into consideration as much as the evident power to discriminate; and, when malicious intent is apparent, the Common Law maxim, *Malitia supplet aetatem,* applies, even in instances in which the conduct of extremely young children is involved. This view is now generally accepted by criminal jurisconsults.

The paternal authority, *patria potestas,* of the Roman father, who possessed uncontrolled power, *jus vitae necisque,* over his offspring, and which persisted, in a somewhat modified form, to the last days of the Empire, has, deprived of its cruel and revolting features, survived to the present time in all legislation founded upon the Civil Law; and the father, no longer a domestic autocrat, in case he is openly defied, can now demand the intervention of the proper authorities to enforce his commands, or punish his children.

Spanish jurisprudence has always displayed great leniency in the treatment of minors. *Las Siete Partidas* provided that a boy under fourteen could not be accused of crime. The Penal Code of Spain fixes the age of criminal responsibility at from nine to fifteen years, but only where discernment is proved to the satisfaction of the court. Thus, the crucial test of legal liability for juvenile delinquency is, in almost every case, whether or not the minor understood the wrongful nature of his act.

Tribunals having jurisdiction of the offences of children under fifteen years of age were established in Spain by a law which became effective August 2, 1918. The magistrates of those courts are not required to have had judicial experience.

This work of Professor Jimenez de Asúa, on Penal Law, is very interesting. (*Hijos de Reus. Cañizares 3, duplicado,* Madrid, Price 18 *pesetas.*)

Pozuelo y Lara (Emilio): *Proyecto de Ley del Registro y Seguro de la Propriedad Immueble.*

A treatise relating to mortgages of real property, constituting practically an hypothecary code, which provides for the security of such property by advocating a plan for the immediate indemnification of persons injured through the wrongful application of the laws by the functionaries charged with their interpretation and execution. A large number of forms and tables of fees are added, which materially enhance the value of the book. (I. Vol. 4°, 248 pages. *Hijos de Reus Cañizares 3, duplicado,* Madrid, Price 6.50 *pesetas.*)

Neveiro, (Constante Amor): *El Problema de la Pena de Muerte y de sus Sustitivos Legales.*

A learned and exhaustive work on the death penalty, and its substitutes, where any exist, viewed in all its phases, and discussed with great minuteness and discrimination. The general tenor of the conclusions of the author are favorable to the preservation of the extreme penalty for such crimes as society has hitherto deemed essential for its own existence, despite the fact that there is everywhere a noisy and persistent class of sentimentalists, who, sympathizing with all criminals, demand that they be treated with more indulgence, and that capital punishment be abolished. The present contempt for law generally prevalent, and especially to be remarked in the United States, is largely attributable to the efforts of such persons, some of whom are sincere, and others, sympathizers with every attack upon industry and the prosperity it brings, are not. The author of this excellent work, although a member of the clerical profession, and therefore presumably disposed to mitigate the rigor of penal legislation, has no such fallacious ideas, or prejudices. Entertaining no doubt of the expediency of the death penalty, although deploring the necessity which requires its infliction, he unhesitatingly advocates the execution of the offender when his culpability has been definitely established. The arguments of the opponents of capital punishment are refuted with great ability, and the injurious and impracticable effects of their theories decisively exposed. Such crimes as, in the judgment of the author, should not be punished with death, are excepted, and the reasons for the exceptions clearly stated. The work is edited by Dr. Pedro Isaac Rovia, Professor of Penal Law in the University of Santiago, who has contributed much valuable information by way of commentary. (*Hijos de Reus. Cañizares, 3 duplicado,* Madrid, I. Vol. 400 pages.)

Bertrans (J.): *Manual Práctico del Patrono y Obrero ante el Tribunal Industrial.*

This is a compendium of the laws governing the relations of employer and employee and establishing the liability of the former in case of accident, corresponding to our Workmen's Compensation Acts. It contains many valuable and instructive notes, as well as rules of procedure, forms of contracts, and the method of determining responsibility in case of accident. Its thoroughly practical character is its greatest recommendation. (*Agustin Bosch, 5 Renda de la Universidad,* Barcelona, 8vo. Price 3 *pesetas.*)

Legislación Obrera. Another work on the same subject, but far more extensive in scope. It includes a summary of legislation concerning labor in general, insurance, the employment of women and children, the requirements of inspectors of factories, warehouses, and magazines, and the forms of reports to be given in accordance with the laws. (*Agustin Bosch, 5*

Renda de la Universidad, Barcelona, 8vo. Price 4 *pesetas.*)

Vera, (José Luis de): *Sobre la Sociedad de las Naciones.*

A plan for the establishment of an International Court of Justice, evidently suggested by the proceedings of the League of Nations. Its main object is the permanent termination of war, and the Utopian hope of everlasting peace in consequence, a subject which has already been exhausted. It resembles what has been described as an "iridescent dream," and presents nothing new, useful, conclusive or practical.

S. P. S.

Switzerland

Legislation in 1921

Both the National Constitution and the constitutions of several cantons have received important amendments during the year, while a considerable volume of regulation has been added to the national statute book by parliamentary enactment supplemented by ordinances proceeding from the Federal Council. The country's economic condition has been the object of much legislation looking to the amelioration of distress arising through unemployment (*Arbeitslosigkeit, chômage*) and to the maintenance of Swiss industrial prosperity through restrictions on importation (February 13, 1921). The difficult position of hotel keepers has been met by a participation on the Confederation's part, under date of April 16, 1921, in an organization, termed "La Société fiduciaire Suisse pour l'industries hotelière." It is also planned to extend subsidies to various forms of industry, among others to that of watchmaking, which is to be aided by a credit opened for its benefit to the extent of five million francs; under certain specified circumstances, the cantons will also give assistance. Similarly it is planned to aid on an extensive scale those Swiss agricultural proprietors settled in Northern France who suffered through the devastations of the war. While Parliament recognizes that it is here moved by a moral consideration only, there exists, nevertheless, a determination to succor men of Swiss nationality to the uttermost. (Message of the Federal Council to Parliament, August 23, 1921.) Moved by the same spirit, Parliament, on October 5th, authorized a national plan of subsidized labor to be carried out by the cantons, and voted sixty-six millions to support the measure.

The following changes have been recorded during the year in the national and cantonal constitutions: The National Constitution, in article 37, concedes to the Confederation a right of superintendence over inter-cantonal roadways and bridges, and on May 22, 1921, the people voted to insert two supplementary articles to be known as articles 37*bis* and 37*ter*: "37*bis* The Confederation may issue regulations touching automobiles and cycles; the cantons reserve the right to limit or prohibit the circulation of automobiles and cycles. Nevertheless the Confederation may declare as open wholly or in part routes deemed necessary for through traffic. The use of all routes necessary to service of the Confederation is reserved." "37*ter:* Legislation touching aërial navigation is within the province of the Confederation."

On January 28, 1921, Parliament issued a statement announcing the receipt in valid legal form of an initiative supported by over fifty thousand signatures touching the naturalization of foreigners. The petition will be presented in due form to the voters and in two distinct sections, the first of these being intended to modify section two of article 44 of the Constitution which now reads as follows: "Federal legislation shall fix the conditions upon which foreigners may be naturalized, as well as those upon which a Swiss may give up his citizenship in order to obtain naturalization in a foreign country." Section 2 is intended to modify Article 70 of the Federal Constitution which now reads as follows: "The Confederation has power to expel from its territory foreigners who endanger the internal or external safety of Switzerland."

The object of this duplex initiative is, in brief, to lengthen the required term of preliminary residence on Swiss soil and to strengthen the hands of the federal government against undesirable sojourners or citizens.

On June 20, 1921, the Federal Council issued an ordinance supplementary to one made November 17, 1919, touching the entry of individuals on Swiss territory. Switzerland's geographical position is such that the greatest vigilance is required in this matter, as well as in the matter of adopting new citizens.

November 29, 1921, an important initiative petition was reported to Parliament by the Federal Council looking to a modification of Article 77 of the constitution which reads as follows: "Representatives to the Council of states, members of the Federal Council, and officials appointed by that Council, shall not at the same time be members of the National Council." If amended as the petition asks, the article will provide that deputies to the Council of States and members of the Federal Council cannot at the same time be members of the National Council, nor may chiefs of service directly subject to departmental chiefs of the Federal Council nor members of the general or district management of federal railways be such members.

On April 16, 1921, Parliament adopted a resolution declaring the constitutional amendment of Article 35 prohibiting gaming houses, as voted on March 21, 1920, in force from the date of said resolution; it is, accordingly, forbidden to open new gaming houses, while those now in existence will be closed within five years from said date.

On March 14, 1921, the Federal Council reported to Parliament that in the election had on January 30, 1921, proposing the introduction of a clause supplementary to Article 58 of the constitution and intended to suppress military justice, the measure failed to obtain a majority of the popular vote and was therefore rejected.

On the same day the Federal Council reported to Parliament on a second vote taken on said 30th of January on an initiative petition seeking an addition to Article 89 of the constitution and providing for the submission of certain classes of international treaties to ratification at the polls; the initiative was successful, being sustained by a vote of 398,000 against 160,000 and by 20 cantons against 2.

Cantonal Constitutions have been amended in numerous instances and have received the guaranty of Parliament: such has been the case in cantons Valais, Vaud, Glaris, Fribourg, Ticino, Aargav, St. Gall, Solothurn, and Uri.

The widely extending powers of the Federal Council exercised during the past six years by reason of the war are now, through the Council's urgent request, being gradually modified and will soon cease to be exerted; October 19, 1921, the council requested Parliament to designate certain ordinances which might remain in force for a time at least after the Council's

extraordinary powers will have ceased to be affected, and the Council has also made its seventeenth, (October 28, 1921) and doubtless final, report touching the exercise of its war powers. The admirable temper in which these powers have been employed is a striking tribute to Swiss political moderation and sagacity.

An important arrangement has been made by the Federal Council with Sweden under date of November 8, 1921, touching the internment, repatriation, or decease of Swiss or Swedish citizens the subjects of mental alienation; and the convention concluded November 10, 1920, between Switzerland and the tiny Principality of Liechtenstein lying on the Swiss Northeasterly border was announced by Parliament as being in force February 1, 1921. This treaty confides the the postal, telegraphic and telephonic service of Liechtenstein to Switzerland. On April 15, 1921, Parliament announced as in force an *entente* with the government of France touching the treatment of Swiss citizens in the French zone of the Moroccan Empire originally concluded June 11, 1914; the Federal Council will work out necessary details.

During 1921 Parliament has passed the following important acts of general application: January 8, 1921, a new tariff act; February 7, 1921, an act organizing a federal bureau of labor to be attached to the federal department of Public Economy; June 25, 1921, a law reorganizing in part the federal judicial system; January 13, 1921, Federal Council announced as in force from January 1st certain amendments to the act of June 13, 1921, touching sickness and accident insurance; April 4, 1921, the Federal Council issued an important ordinance interpreting the Insolvent law of April 11, 1889; January 24, 1921, the Federal Council issued a series of regulations touching the circulation of aëroplanes above Swiss waters; Aërial navigation between Switzerland and Germany is regulated pursuant to a treaty with Germany announced by the council as effective from December 28, 1920. The important treaty heretofore made with Italy touching the St. Gothard Railway, in 1909, has been somewhat modified as to sur-taxes by an agreement made September 24, 1921.

Mention should be made of an act reorganizing the National Swiss Bank April 7, 1921; the National Council has issued a new set of rules touching its procedure; Parliament met on January 17, February 7, April 4, June 9, October 3, and December 5, closing its work for the year on December 23. On December 15 Mr. Robert Haab of Wädenwil on Lake Zurich, was chosen President for 1922, and Mr. Charles Scherrer, of Cerlier in Canton Bern, was chosen Vice-President. The Confederation has purchased, February 22, 1921, the commodious building, No. 24 Adligenswilerstrasse in Lucerne as a home for the Federal Assurance Court. On September 30, 1921, the Federal Council announced the completion of the census of 1920 giving the country's population as 3,886,090. A locally important concordat has been concluded between cantons Saint Gall and Appensell Outen Rhoden touching the regulation of fishery in Lake Constance, and the Federal Council has approved it. G. E. S.

REPORTS FROM ASIA

The Arms Conference and Extraterritoriality—Japanese Legislation During 1921 Deals with National Finance, Pensions to Disabled Police, Provision for Retired Principals and Teachers of Normal Schools, Profit Guarantees to Owners of Private Railroads and Other Matters

China

The Arms Conference and Extraterritoriality

Among the numerous important subjects considered at the recent Washington Conference on the Limitation of Armaments, was extraterritoriality in China. Before adjourning on Feb. 6th, the Conference adopted the following resolutions which had been reported on Nov. 29th, 1921, by the Pacific and Far Eastern Committee:

Considering that any determination in regard to such action as might be appropriate to this end must depend upon the ascertainment and appreciation of complicated states of fact in regard to the laws and the judicial administration of China, which this conference is not in a position to determine:

Have resolved,

That the governments of the powers above named shall establish a commission (to which each of such governments shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the governments of the several powers above named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts of the Chinese government to effect such legislation and judicial reforms as would warrant the several powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality;

That the commission herein contemplated shall be constituted within three months after the adjournment of the conference with detailed arrangements to be hereafter agreed upon by the governments of the powers above named, and shall be instructed to submit its report and recommendations within one year after the first meeting of the commission:

That each of the powers above named shall be deemed free to accept or to reject all or any portion of the recommendations of the commission herein contemplated, but that in no case shall any of the said powers make its acceptance of all or any portion of such recommendations either directly or indirectly dependent on the granting by China of any special concession, favor, benefit or immunity, whether political or economic.

ADDITIONAL RESOLUTION

That the non-signatory powers, having by treaty extraterritorial rights in China, may accede to the resolution affecting extraterritoriality and the administration of justice in China by depositing within three months after the adjournment of the conference a written notice of accession with the government of the United States for communication by it to each of the signatory powers.

ADDITIONAL RESOLUTION

That China, having taken note of the resolutions affecting the establishment of a commission to investigate and report upon extraterritoriality and the administration

of justice in China, expresses its satisfaction with the sympathetic disposition of the powers hereinbefore named in regard to the aspirations of the Chinese government to secure the abolition of extraterritoriality from China, and declares its intention to appoint a representative who shall have the right to sit as a member of the said commission, it being understood that China shall be deemed free to accept or to reject any or all of the recommendations of the commission. Furthermore, China is prepared to coöperate in the work of this commission and to afford it every possible facility for the successful accomplishment of its tasks.

It will be seen that nothing more is provided for here than an *inquiry* in which all powers may participate but by whose results none are bound. Wisely, too, the question whether the time is ripe to surrender extraterritoriality is left to be settled on its merits and is forbidden to be used as a means of trading for concessions, etc. Members of the Inquiry Commission—one from each of the Conference Powers except China—must be named by May 5th, and it is expected that they will be jurists of eminence who are already familiar with conditions in China, for otherwise the labors of the Commission will be greatly increased and prolonged, and as only a year from its first meeting is allowed for preparing its report, it will be seen that the time is none too long, even for experts, to put into form the results of a comprehensive inquiry "into the laws and the judicial system and the methods of judicial administration of China"—the most populous country on the globe, with territory of even greater extent than that of continental United States.

The report, if searching, accurate and impartial, should afford a valuable contribution to comparative law and will be awaited and perused with profound interest by all friends of China. C. S. L.

Japan

Legislation, 1921

Law No. 1. Amendment to the regulation of loan associations to the effect that the largest amount of loan to the members shall not exceed the market value of securities pledged for it.

Law No. 2. Requires the merchant ships over one hundred tons gross to bear on the hulls scale lines indicating the tonnage of the load.

Law No. 3. Authorizes establishment of the Colonial Bureau in the Formosa Island under the direct supervision of the Governor General of the Island.

Law No. 4. Declares exemption of all duties on the articles of certain descriptions imported from Germany for the use of the Government.

Law Nos. 5 and 6. The policemen's compensation law granting those who are disabled in service one-half their salaries for life. The same amount is also granted to the widow or minor child, or children, where a loss of life has resulted under like condition.

Law No. 7. Declares that the general laws of taxation now in force shall be applied to the Sakhalin Island unless otherwise declared.

Law No. 8. Authorizes the Secretary of the Navy to have the Naval Coaling stations opened for the business of supplying coal, oil, and other combustible materials, with a capital of 2,000,000 yen.

Law No. 9. Declares that all sales concluded under the authorities of the Law No. 8 shall be paid in cash on delivery.

Law No. 10. Amendment to the regulation of the Public Health Bureau in Korea increasing a number of the officials and expenditures.

Law No. 11. Grants a special budget to the Imperial Universities.

Law No. 12.—Authorizes extension of the Engineering Department of the Tokio Imperial University.

Law No. 13. Amendment to the Railroad Extension law by which an issue of bonds is authorized to raise a necessary fund. The definite amount is subject to further legislation.

Law No. 14. Grants private railroad owners a subsidiary of five percent of the actual cost of building for a period of the first ten years.

Law No. 15. Imposes a special tax on all aliens engaged in business in Korea, the Formosa, and the Sakhalin Islands.

Law No. 16. Grants the Public School teacher a short term army service and compensation. He is to serve in the army at least one year. While in his actual service, he is to receive the same salary as a school teacher, not as a soldier. His salary shall be paid by the National Treasury Department, not by the school district from which he came.

Law No. 17. Amendment to the Normal School teachers' pension law to the effect that the teacher who retires after thirty years actual service shall be entitled for life to the salary he has been receiving at the time of retiring. After his death, his widow or minor child, or children, shall receive a certain portion of it, subject to the executive decree of the districts.

Law No. 18. Amendment to the pension law for the retired principals of the Normal Schools, granting them pensions equal to the last salaries they have received at the time of retiring, for life, and a certain portion after death, to the widow, or minor child, or children. The definite amount to be granted to the survivors shall be determined according to the by-laws of the district.

Law No. 19. Regulation of the employed officials in the National Libraries, providing pensions and compensations for retiring, and injury or death.

Law No. 20. Provides pension for the public school teacher who duly retires or becomes disabled by accident or otherwise in the course of service, one-third of his salary for life.

Law No. 21. Grants special compensations to the officials serving in the territorial possessions. Twenty to fifty percent of the salary is given according to the economic condition of the different parts of the territory.

Law No. 22. Defines the power of the Governor of Territory, declaring that the authorities of said Governor shall not exceed the power of the Provincial Governor in Japan proper.

Law No. 23. Authorizes the Governor of the Sakhalin Island, a maintenance and improvement of the public schools and enforcement of a compulsory education.

Law No. 24. Grants the Army Automobile manufacturers subsidiaries, provided that no product shall be exported without a permission of the Secretary of the Army.

Law No. 25. Provides the District Courts the Appellate jurisdiction over the judgment given by the Courts of Consuls residing in China.

Law No. 26. Amendment to the budget law for the year 1921, increasing the expenditure 20,000,000 yen.

Law No. 27. Authorizes the Secretary of the Treasury to issue bonds for the amount of 200,650,000 yen to be applied to the public works in Korea.

Law No. 28. Authorizes the Secretary of the Treasury to raise 19,600,000 yen in bonds bearing five percent interest. The money so raised shall be applied to the development of the Sakhalin Island.

Law No. 29. Amendment to law No. 27 decreasing 100,000,000 yen from the amount already authorized to be raised.

Law No. 30. Declares that the Secretary of the Treasury shall have authority to raise 480,000,000 yen in bonds bearing four percent interest.

Law No. 31. Authorizes the Secretary of the Treasury to raise 180,000,000 yen in bonds bearing five percent interest.

Law No. 32. Authority is given to the Secretary of the Treasury to have 90,000,000 yen invested in the national works for tobacco industry, and 60,000,000 yen for the iron industry.

Law No. 33. Declares that all men serving in the gendarmerie shall be entitled to certain compensations, where injury or death has resulted in course of service.

Law No. 34. Gives the private railroad owners a guarantee of profit. It declares that where the profit does not amount to eight percent of the total investment, the deficit shall be paid up from the National Treasury. Where the profit is over eight percent of the total investment, the surplus shall be applied for the repayment of capital invested. This provision shall apply to the railroads in Korea, excluding all other territories.

Law No. 35. Declares that all salaries and compensations paid to the municipal officials and employees shall be construed as paid from the State Treasury.

Law No. 36. Authorizes establishment of the National Granary, with a capital of 200,000,000 yen. Rice, wheat, corn, and all other agricultural products are to be stored for sale under the supervision of the Secretary of Commerce and Agriculture.

Law No. 37. Authorizes the Secretary of Commerce and Agriculture to hold a court of investigation for monopolies and impose penalties upon conviction.

Law No. 38. Enactment providing protections for the railroad business to the extent that where the profits of a railroad company should decline because of the parallel lines built by the Government, such a loss shall be indemnified by the National Treasury for a period of ten years. Where a railroad company retains eight percent net profit of the capital invested, whatever the loss may be, the Government shall not be responsible.

Law No. 39. Provides subsidiaries amounting to eight percent of all capital invested in the railroads in the Sakhalin Island.

Law No. 40. Declares that a subsidiary granted by the authority of law No. 39 to any one railroad company shall not exceed 500,000 yen.

Law No. 41. Enactment regulating the aerial navigation. It defines aerial navigation as flying in and through the air, on or by airplanes, balloons, kites, and other means, including that which glides on the ground without rails, and that which glides on the water. The pilots and mechanics are required to have licenses, and the machines must bear the certificates issued by the duly authorized officers.

J. G. K.

THE PHILIPPINES

A Glance at Philippine Legal Sources and Institutions—Legislature Enacts Measures Initiated by Gen. Wood to Improve Financial Situation—Party Upheaval May Change Course of Native Politics

THE Secretary of the Comparative Law Bureau of the American Bar Association has repeatedly invited the undersigned to keep the American Bar Association in touch with developments in law and jurisprudence in the Philippine Islands. Frequently also, inquiries have been received with reference to certain phases of Philippine legal institutions. To the first invitation I have not responded for the very good reason that the Philippine field was accurately and completely covered by Hon. Charles S. Lobingier, Judge of the United States Court at Shanghai, China; while to specific questions propounded, I have always been pleased to furnish the information at my command. It has, however, occurred to me that it might be well to make a sort of an index, or bibliography, or outline, of some of the Philippine legal sources and institutions in order that those interested may know where and how to begin their investigations. Parenthetically, it may be remarked that it is to be hoped that many take advantage of these sources, for the Philippines offers to the scholar and investigator a most fascinating study in the conflict which has been waged between the Anglo-American common law and the Roman-Spanish civil law, not to speak of the Mohammedan law and the Philippine customary law.

With the permission of the officers of the Section of Comparative Law, a brief survey of the Philippine field will now be made:

Public Laws of the Philippine Islands.—Fourteen volumes published in both English and Spanish. A compilation of the Acts of the Philippine Commission, embracing Acts and Military Orders in force on October 15, 1907, is obsolete. The Election Law of the Philippine Islands (1916) has been annotated and published separately by José Teodoro and Ramón Diokno of the Manila Bar. Among laws, either important or included among the Uniform State Laws, there can be mentioned the Lang Registration Act (Act 496), introducing the Torrens system; the Corporation Law (Act 1459); the Chattel Mortgage Law (Act 1508); the Election Law (originally, Act 1582), inaugurating the Australian Ballot System; the Bankruptcy and Insolvency Law (Act 1956); the Negotiable Instruments Law (Act 2031); the Warehouse Receipts Law (Act 2137); the Irrigation Law (Act 2152); the Cadastral Act (Act 2259); the Public Utilities Law (Act 2307); the Insurance Act (Act 2427); the Salvage Law (Act 2616); the Usury Law (Act 2655).

Codes.—The Code Committee took as the basis of its work that there should be four codes: An administrative code, a civil code, a correctional code, and

a remedial code. Only the Administrative Code has been enacted into law (Act 2711) by the Philippine Legislature. It is published in both English and Spanish.

Annotated editions of the Civil Code in Spanish have been published by José Lopez Liso (1919) and William A. Kincaid (1920). A new and excellent edition of the Civil Code of Spain, with Philippine notes and references, translated into English and edited by former Justice F. C. Fisher of the Supreme Court of the Philippine Islands, recently appeared (1918). Numerous editions of the Code of Commerce in Spanish can be found. In English, the Code of Commerce of Spain, with amendatory laws of the Philippine Islands, appears annotated and compiled by Prof. José A. Espiritu of the University of the Philippines (1919). The Penal Code has numerous Spanish editions, including an annotated edition by Assistant Fiscal Eulogio B. Revilla (1920); an annotated English edition with an Appendix containing the Penal Laws enacted by the Philippine Commission and Legislature, the Code of Criminal Procedure and some additional provisions relating to the Law of Criminal Procedure, has been prepared and edited by the Attorney-General (1911). The Code of Criminal Procedure, being General Orders No. 58 of the Military Governor, as above indicated appears as an Appendix to the Penal Code. The Code of Civil Procedure, being Act 190 of the Philippine Commission, has been brought out in Spanish as *"El Código de Procedimiento Civil,"* by Claro M. Recto of the Philippine Bar (1914), supplement (1919). An annotated edition of the Code of Civil Procedure of the Philippine Islands in English has been prepared and published by Mr. Thomas Cary Welch of the Manila Bar (1921). The Spanish Law of Waters of August 3, 1866, has been translated into English by Justice Fisher and published in separate form (1912).

Customary Law.—A committee headed by Hon. Norberto Romualdez, former Judge of First Instance, is now busy compiling the Philippine customary law. Najeeb M. Saleeby's Studies in Moro History, Law, and Religion (1905), gives English translations of the official codes of Luwaran and Magindanao.

Ordinances.—The Charter of the City of Manila and the Revised Ordinance of the City of Manila, prepared for enactment and edited by George A. Malcolm, appears in both English and Spanish (1917).

Rules of Court.—Rules of Court of the Supreme Court of the Philippine Islands, the Court of First Instance, and for the Examination of Candidates for Admission to the Practice of Law, were adopted by the Supreme Court of the Philippine Islands on October 2, 1918, and published in Spanish and English in pamphlet form.

Reports.—Forty volumes of the Philippine Reports have been published in English and Spanish. A few of these volumes are out of print. Philippine common law as such is recognized in the decision of the Supreme Court of the Philippine Islands in United States v. Abiog (1917), 37 Phil. 137.

Digest.—A Philippine Digest is now in course of preparation and can be expected to be completed early in 1922.

Law Books.—Among the legal treatises of peculiarly Philippine origin there can be mentioned the following:

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Ignacio Villamor, *Tratado de Elecciones* (Treatise on Elections), (2d Ed., 1911).

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Law Publications.—Official Gazette, published weekly in English and Spanish by the Government of the Philippine Islands. *Philippine Law Journal,* published monthly, July-April, in English by the College of Law, University of the Philippines; volume VI just completed. *Philippine Law Review,* formerly published monthly by the Philippine Bar Association; last number, Annual Meeting Number, 1919, brought out in April, 1919.

Associations.—Philippine Bar Association: President, José Abreu, Manila; Secretary, José A. Santos, Manila. American Bar Association: Vice-President for the Philippines, W. A. Kincaid, Manila; Member of General Council for the Philippines, E. B. Conant, Kansas City, Mo. International Bar Association of the Orient: President, Dr. Rokuichiro Masujima, Tokyo, Japan; Secretary, Dr. Horiye, Tokyo, Japan.

Law Schools.—College of Law, University of the Philippines (English), a member of the Association of American Law Schools. Private law schools officially recognized: Law School of the University of Santo Tomás (Spanish), *Escuela de Derecho de Manila*

(Spanish), Philippine Law School (English), *Academia de Leyes* (Spanish and English), and National Law College (English).

Information.—Address either the Attorney-General of the Philippine Islands, the Dean, College of Law, University of the Philippines, or the Secretary of the Philippine Bar Association, for further information. The volumes here mentioned can be obtained either from the Bureau of Printing, Manila, P. I., or from the Lawyers Cooperative Publishing Company, Manila, P. I.

GEORGE A. MALCOLM,
Justice, Supreme Court of the Philippine Islands.

Legislation

On February 20th, at an extra session, the legislature completed the enactment of measures initiated by Governor General Wood and designed to rehabilitate the precarious financial situation in the archipelago. Reaction from the false prosperity of the war brought a general business depression, and various experiments by the Philippine Government in the direction of private business had left the treasury practically bankrupt. Among these were the purchase of the Manila & Dagupan Railway, the promotion of the National Coal Company and the Philippine National Bank. The depletion of the gold reserve had really begun as far back as 1912 and was one of the points of difference between Governor General Forbes and Secretary Charles B. Elliott, the latter standing resolutely for preserving the fund intact.

These and other causes had contributed to the depreciation of the Philippine peso. Normally, and up to 1919, it had been equivalent to fifty cents American currency. In that year it began to decline and eventually the discount became as much as 16%. The treasury deficit also prevented the inauguration of much needed public works. The proposed new bridge across the Pasig River at Manila is still unfinished. Important harbor works in Manila Bay had to be suspended.

Such was the situation confronting Governor General Wood when he assumed office last October. Recognizing that their root was economic, he set about to remedy the accumulation of evils, first, however, selecting a more efficient personnel for the important offices. Here for a time he seemed likely to encounter obstacles, for the Senate at first seemed disposed to refuse confirmation of his appointments on the ground that it had not been previously consulted regarding them. Wiser counsel prevailed, however, and on November 15th, all important nominations were confirmed.

The legislature had assembled on October 16th, and remained in regular session until February, when it adjoined without passing the recommended measures. An extra session, therefore, became necessary and it was not until then that the Governor General's legislative program was finally adopted. It included a concurrent resolution, authorizing urgent representations to the President and Congress for increasing the Philippine debt limit from $35,000,000 to $75,000,000; laws authorizing bond issues to maintain the parity of treasury certificates with the silver peso, to establish a gold standard fund, fixed at 15% of government money in, and available for, circulation; for public works and for reimbursement of the Federal Government for advances during the war.

The Governor General has expressed the view that it will now be possible to place Philippine finances on a sound basis, but it is feared that unless he changes his previous intention to remain in office for one year only, this much desired consummation may not be realized promptly. General Wood's experience as an administrator, both in Cuba and in the Moro Province, has been invaluable in the recent Philippine crisis, and it is to be hoped that he can be induced to remain at his task for some years at least. One of the defects of our colonial administration has been the frequent changes of officials. In the Philippines particularly we can well follow the policy of Great Britain, which kept Lord Cromer in Egypt for a quarter of a century, and General Wood is more nearly of the Cromer type than any other American Governor of the Philippines.

The legislature also adopted a resolution calling upon Congress to authorize amendment of the laws governing the exploitation and leasing of oil lands. In view of the encouraging reports from prospectors regarding extensive and valuable oil fields in the Philippines, that subject cannot too soon engage the attention of Congress.

The Philippine legislature likewise adopted some amendments to the election laws to meet the criticisms contained in the report of the Wood-Forbes Commission, and to reduce, if possible, the almost countless contests which follow every election. As will be seen, however, still other amendments are needed.

Party Upheaval

Outside of the foregoing and the appropriation bill, very little was accomplished at these legislative sessions. One reason, undoubtedly, was a party upheaval which may change materially the course of native politics in the Philippines. Ever since the organization of the legislature the nationalist party has been in complete control. In the House, Speaker Osmeña has been the dominating figure, and in the Senate, Manuel Quezon. While adhering to the same party, these two leaders are of radically diverse types. Osmeña is partly of Chinese blood, shrewd, conservative and reticent. Quezon is partly of Spanish descent, impulsive, outspoken and progressive. Quezon advocated an advanced divorce law; Osmeña opposed it—successfully up to date. Quezon favors the general adoption of English; Osmeña inclines to the preservation of the numerous native dialects. These and many similar differences long since led to predictions of a party division. The climax was reached during the past winter in a controversy over "group leadership," as a result of which Mr. Quezon resigned the Presidency of the Senate. He and his followers have organized the "Liberal Nationalist" party, while Mr. Osmeña remains leader of the old Nationalist party.

The elections occur in June and both sides are preparing for the supreme test. The new party is handicapped, however, by the fact that the present election law recognizes but two parties, while the Democratic or old antagonist of the Nationalist party, is also in the field and will be entitled to its regular quota of judges and clerks of election, though none are available for the new party. Another "extra session" of the legislature has been suggested to meet this emergency, but in the present legislature the old Na-

tionalists form a majority and would hardly accommodate their new foes. The alternative for the Liberals appears to be fusion with the Democrats.

The Veto Power

Up to 1916 no American Governor General of the Philippines possessed the power to veto legislation. As chairman of the Philippine Commission, which constituted the upper house of the Philippine Legislature, he had the same voice as any other member, but no greater. The Jones law of 1916 (39 U. S. Stats. at Large, ch. 416, sec. 19) provides that every bill or joint resolution passed by the legislature must be submitted to the Governor General for approval and, if approved or if not returned by him within twenty days (or thirty if the legislature shall meanwhile have adjourned), shall become effective; but if disapproved, it "shall be reconsidered" by the legislature, which by a vote of two-thirds may again send it to the Governor General who may in turn transmit it to the President who has the right of absolute veto, if exercised within six months.

No instance is recalled of any exercise of this power on the part of Governor General Harrison, whose administration continued some four and a half years after the above mentioned law was passed. President Wilson, however, seems to have utilized its provisions to hold in abeyance the act which prohibited foreigners from acquiring land in the Philippines.

But the first actual use of the veto power has just been made by Governor General Wood who has vetoed sixteen of the eighty-three bills passed by the legislature at its recent sessions. Most of the vetoed measures involved expenditures more or less heavy, one of them providing an appropriation of P18,000,000 ($9,000,000), expendible during nine years for the development of the government university. Governor General Wood's motto seems to be "solvency first."

C. S. L.

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Lamar C. Quintero

THE members of the Comparative Law Section of the American Bar Association received last October the sad news of the death in New Orleans of Mr. Lamar C. Quintero, an honored member of the Bar of Louisiana and a member of the Section, which was formerly the Comparative Law Bureau, for many years, a frequent attendant and speaker at its meetings and a contributor to its publications.

Mr. Quintero, after a long illness, died at his home on October 30, 1921, leaving surviving him his widow, mother, a sister and a brother.

He succeeded, in 1883, his father, J. A. Quintero, as Vice-Consul of Costa Rica, and eight years later was made Consul General of that Republic for the entire Southern States of the Union. In that capacity and also as attorney for the Tropical Division of the United Fruit Company, he was a large factor in developing the trade of New Orleans with Latin America and did much to bring about friendly cooperation between the United States and the other American Republics.

At the suggestion of the late Chief Justice E. D. White, President McKinley tendered to Mr. Quintero the apointment as Associate Justice of the Supreme Court of the Philippine Islands, but Mr. Quintero declined this honor, preferring to live in his native State.

In 1910 he was appointed by President Taft as one of the American delegates to the Fourth International Conference of American Republics held in Buenos Aires and was also appointed Special Representative of the United States at the Centennial in Chile.

Distinguished, and with a personal charm of manner far beyond the ordinary, Lamar C. Quintero filled niches in both public and private life in a way that will not easily be replaced. In the social life of New Orleans few men won and held so many and such firm friends, or won and held them by more sterling qualities of friendship. The deceased possessed in the highest degree the brilliancy of his Latin ancestors and a versatility that came from his double training, first as a journalist and later as a prominent and able member of the bar.

W. O. HART.